Modern Militiaman

A Journal of the Modern Resistance Movement

Issue #6, July 4, 1997

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Purpose and Dedication: This electronic and limited print newsletter is dedicated to the modern militiamen and women of the American Resistance Movement. The writers, editors, and contributors of this newsletter have by their talents became leading actors within the overall Patriot movement, be they militiamen, common-law jurists, tax-protesters, Freemen, shortwave talk-show hosts, Libertarians, Conspiracy Theorists or other assorted Rebels with a cause. We are an unruly bunch.

Most of the feeds and articles to this newsletter come off the Internet or electronic mail, which is the Gutenburg device of choice. Far-flung, quick, cheap, and secure, the Internet is a growing web of information which cannot be stopped or effectively censored. While at least one copy of each issue will be printed in order to take advantage of 1st Amendment press protections, thus blanketing the electronic edition, this and every issue is designed to be pulled apart and redesigned for every region, for every portion of the former Sweet Land of Liberty, to be used by Patriots everywhere. The opinions expressed in this newsletter are the opinions only of the authors, nobody else. The result should be freedom, not peace.

This is the sixth issue. This issue is dedicated to Charles & Estella.

Managing Editor Martin Lindstedt (mlindste@clandjop.com)

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Disclaimer: Opinions expressed by the various authors presented here are not necessarily those of the Editorial Staff of *Modern Militiaman*, nor does inclusion of any material in this publication constitute an endorsement or advocacy of any particular course of action.

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There Ain't No Such Thing As A "Constitutional Militia"

> *The Congress shall have the power to . . . To provide for organizing arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;* **-- Article 1, Section 8, Constitution of the United States**

This quote from the Constitution should conclusively prove the foolishness of those militiamen who want to claim they are part of a "constitutional militia." Ask them for the piece of paper which shows that they have been organized, armed or under a code of military discipline directly derived from Congressional authority and they will draw a blank. If they claim to be a state militia, then ask them where is their appointment from the state governor giving them an authority to train their enlisted militiamen. Again a blank. Which reflects reality. None of these so- called "constitutional militia" are any such thing. All they do is claim to be something they really are not.

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I can hear it now, the yelps of protest to above assertion. "But we have such great quotes from the founding fathers about what the militia is and isn't!" *Who are the militia? They consist now of the*

whole people, except for a few public officers. **(George Mason - 3 Elliot 425.)** Ignored by most every single would-be militia idiot who gets the above mentioned line correct, are the following lines:

> *But I cannot say who will be the militia of the future day. If the paper on the table gets no alteration, the militia of a future day may not consist of all classes, high and low, and rich and poor; but may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. . . We know what they are now, but know not how soon they may be altered.* **3 Elliot 426.**

George Mason was an Anti-Federalist, who opposed the ratification of the Constitution. Every single one of the founding fathers knew who the militia were. But some of them wanted a centralized government. What vain assurances a federalist like James Madison made in order to get the constitution ratified means nothing. Even more to the point, what the out-voted Anti-Federalists like Mason and Patrick Henry saw would come to pass under color of the Constitution is in large part irrelevant. The government courts do not take into account what the great men who saw the coming evil had to say in disparagement of the document which grants government functionaries their power. It is the way of the world for degenerate men in government to ignore any curtailment on their power.

No, the literal words of the Constitution itself show how these so-called Constitutional militias which sprang up, and now are dying under the glare of government abuse, are the illegitimate posturings of the foolish. There really ain't any such thing as a "Constitutional militia."

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THE COLLECTIVIZATION AND CONSOLIDATION OF THE PEOPLE under one central government by means of the spurious Constitution was foreseen by farsighted patriots who had recently rejected ***foreign*** rulers and would have no more kings appointed from among their ranks. These patriots brought up the inherent illegality of the way in which the proposed constitution professed to replace the Articles of Confederation. But in addition to pointing out the illegitimacy of the proceedings, these Anti-Federalists pointed out the consequences of allowing the defense forces of a free people to be placed under the control of the very people who would make it necessary, by their misconduct in office, for these defense forces to act in opposition to their rule. One of the greatest Anti-Federalists, Patrick Henry, used all the oratory he could summon to speak against allowing the people's militia to fall underneath the power of the federal government . The following quotes come from the Third Volume (of five total) of *"The Debates in the Several State Conventions on the Adoption of the Federal Constitution" (Elliot Debates)* which concerned the Virginia Ratifying Convention held in June of 1788.

> *Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force.***3 Elliot 45.**

> *My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen that this new plan will bring us an acquisition of strength -- an army and the militia of the states. This is an idea extremely ridiculous: gentlemen cannot be earnest. This acquisition will trample on our fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defense, the militia, is put into the hands of Congress?* **3 Elliot 47-48.**

> *O sir, we should have fine times indeed, if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you can defend yourselves, are gone, and you have no longer an aristocratical, no longer a democratical spirit. Did you ever*

read of any revolution in a nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America.
A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? **. . . 3 Elliot 51.**

. . . Your militia is given up to Congress, also, in another part of this plan: They will therefore act as they think proper: all power will be in their own possession: of what service would militia be to you when most probably, you will not have a single musket in the state? for, as arms are to be provided by Congress, they may or may not furnish them.
Let me here call your attention to that part which gives the Congress power "to provide for organizing, arming, and disciplining the militia, and for governing such a part of them as may be employed in the service of the United States -- reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." By this, sir, you see that their control over our last and best defense is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither -- this power being exclusively given to Congress. The power of appointing officers over men not disciplines or armed is ridiculous; so that this pretended little remains of power left to the states may, at the pleasure of Congress, be rendered nugatory. . . . Will the oppressor let go of the oppressed? Can the annal of mankind exhibit one single example where rulers overcharged with power willingly let go of the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes the oppressed have got loose by one of those bloody struggles that desolate a country; but a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of. **3 Elliot 51-52.**

We are told, we are afraid to trust ourselves; that our own representatives -- Congress -- will not exercise their powers oppressively. That we shall not enslave ourselves; that the militia cannot enslave themselves, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny? They have been enslaved at the hands of their own people. If it will be so in America, it will be only as it has been every where else. I am still persuaded that the power of calling forth the militia, to execute the laws of the Union, &c., is dangerous. . . . Under the order of Congress, they shall suppress insurrections. Under the order of Congress, they shall be called to execute the laws. It will result, of course, that this is to be a government of force. Look at the part which speaks of excises, and you will recollect that those who are to collect excises and duties are to be aided by military force. They have the power to call them out, and to provide for arming, organizing, disciplining, them. Consequently they are to make militia laws for this state. **3 Elliot 411.**

It was well understood by the founding fathers who lived in Virginia that the proposed Constitution of 1789 would have the effect of taking the various state militias out of the hands of the respective states and placing them under federal control. Patrick Henry was the governor of Virginia during the Revolutionary War and had called out the Virginia militia several times during that struggle for independence and had set George Rodgers Clark on his raiding expedition outside the confines of Virginia. So Patrick Henry knew the uses of the militia and he hated the possible misuse of using military power for civil and political ends.

Every single one of the Federalists saw the implications of Patrick Henry's objections and none of them had an answer concerning how placing the state militias under federal control meant anything other than what the proposed Constitution said it meant. John Marshall, a delegate to that convention who would later be John Adams' Secretary of State (where he did everything in his power to enforce the Alien & Sedition Acts) and Adams' Federalist "midnight judges" appointee to the post of Chief Justice of the Supreme Court, said that *"It requires a superintending power, in order to call forth the resources of all to protect all."* **3 Elliot 421.** This is the same rascal lawyer who gutted states rights in favor of federal power every time he had a chance while sitting on the bench as one of the Supremes, (See *Ogden v. Gibbons*), enhanced the power of the federal judiciary by giving itself a spurious power of judicial review (See *Marbury v. Madison*), stretched and twisted the "Congress has the power to make all laws which necessary and proper for carrying into execution the foregoing powers" Art. 1 Section 8 clause and gutted the 10th Amendment (See *McCulloch v. Maryland*). At the Virginia convention, like most appointee Supremes awaiting confirmation to this powerful post conferred by the Constitution, Marshall smarmed about how *"the power of governing the militia was not invested in the states by implication, because, being possessed of it antecedent to the adoption of the government and not being divested of it by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said that the states derived any powers from that system, but retained them, though not acknowledged in any part of it."* **3 Elliot 421.**

John Marshall was a professed 9th and 10th Amendment supporter before there were any such amendments, but he reverted to his true form after he had come to power via the Constitution. If no Constitution had been ratified, then Marshall would have had to settle for a place on the state court of Virginia, and thus never had a position of rulership through color of law over millions enslaved under a consolidated centralized government.

The Virginia Federalists answered the Anti-Federalists' concerns with the bland assertion that federal despotism couldn't happen in America. As such they doomed their state and their fellow Southern states to a war of aggression waged by that federal government 72 years later, with the militia powers of the states submerged in the involuntary servitude of conscription. If they had not gutted their Confederacy by rejecting the voluntarily-entered-into Articles of Confederation and ratifying the blood-encrusted Constitution, there never would have been a federal Leviathan -- which to feed the ends of power destroyed over 600,000 American lives and imposed the myth that the secession of the oppressed is immoral.

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SO WHY, in the founding of the militia movement over three years ago, did its founding leadership insist that they were "Constitutional militias" when there is no such thing, as such extra-legal private paramilitary organizations are by a reading of the Constitution prohibited? I shall attribute it to in large part moral cowardice, with a good deal of stupidity thrown in. They refused to face reality, which demanded that certain unpleasant facts be faced, met and matched. Their unwillingness to think explains their stupidity. Rather than speak plainly and warn the common people about the consequences of shielding criminal government, such as annihilation and the collapse of civilization following total civil warfare, altogether too many of us "militia generals" have preferred to sugar-coat the truth because we were scared to look like 'terrorists' or 'extremists.' Few, if any of us, have faced the fact that getting our rights back entails the absolute extermination of evil men who infringed on those rights motivated by nothing more than their personal greed for wealth and power. Since these evil men will not surrender themselves to justice voluntarily, it will become necessary to use force to bring them to justice. The use of force entails violence. Violence implies killing. Patrick Henry's most famous quote should be updated to say: "Give me my liberty or I'll give you your death." And let this message stand for those who would protect criminals from justice.
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The stupidity that accompanies moral cowardice can be best diagnosed as selective moral blindness brought about by fear. Listen up, ‘Constitutional Militia’ generals: Supposedly these militias were founded in **opposition** to federal government abuses. With the restrictive gun laws passed in defiance of the 2d Amendment willfully passed by Congress, it passes belief to expect this very same rabble of politicians to arm popular militia organizations with modern weaponry sufficient to challenge government rule. Even the Congressional mattoid majority can figure out that these militia organizations have a different ideology other than politics as usual, and thus will not train them on how to use military force in opposition to their rule. As far as Congressional discipline is concerned, all that has come out of the halls of power has been "anti-terrorism" legislation which nervously targets the means for potential popular insurrection.

We have heard time after time calls for help over the Internet from ‘Constitutional militia’ generals who were arrested and jailed while the rest of the ‘Constitutional militia’ generals did nothing but bitch about government abuses, find excuses for doing nothing, or even gloat about how that particular poor whining bastard got arrested by the feds. Face it -- if given a chance to talk as opposed to taking action, most of us Internet warriors will choose to play it safe and say that we are opposed to violence because we formed a "Constitutional militia." Even Louis Freeh, Head Goon of the Federal Butchers Incorporated, recently admitted that these open public militiamen were no threat to the corporate regime calling itself the United States Government.

State government is no better. They won’t recognize any legitimacy of these new militia groups by providing an officer corps to command these groups. Not that any such command is sought by the militia groups. It was but a foolish daydream to expect state politicians, no different a breed than their federal cousins, to deputize any group of private citizens which might curtail their power -- as they have openly threatened to do. The reason the leadership of the militia groups said that they were "Constitutional militias" is because they did not want to admit to the true reasons they formed these militia groups -- not even to themselves. The more farsighted ones knew that fighting for their rights would lead to warfare when the government refused to honor its Constitutional commitments.

LET US INSTEAD BE THANKFUL that the people who had been survivalists for five, ten, twenty years never broke cover. Let us be thankful that the Christian Identity elements never broke cover. Let us be thankful that some of the White/Black Nationalists learned to keep their mouths shut and that they went underground. And let us pray that the rank-and-file membership who have left the misnomered 'Constitutional militia’ movement have finally gone underground and no longer speak to their former gutless-&- clueless militia generals. They figured them out and remained underground in their natural cells and never joined the open militia movement. Now they bide their time, watching, waiting, and eventually acting.

At some point they saw the handwriting on the wall. They moved out of the big city. They will look on without a trace of pity when the cities burn or fall prey to biological warfare. They are not scared of the IRS because they don’t have massive amounts of income to declare and they have learned to file modest returns which do not attract suspicion. They have driver’s licenses and car liability insurance and they do not speed or run red lights and you will never see them in a courtroom. They are not registered to vote and if they do vote it is only against higher taxes. They politely say "yes-sir" and "no-sir" to politicians, lawyers, judges, government bureaucrats and police while at the same time determined that when the time comes that such filth and its spawn must and will be utterly exterminated for the sake of restoring civilization. They are not worried about welfare, government corruption, or the national debt because such are the impending signs of government collapse -- and they never did much care for the government. They don’t intend to ‘overthrow the gubbnmint’ because it is doing such an excellent job of overthrowing itself. They understand that Timothy McVeigh was both a hero who got off his ass and did his best to avenge the government murders at Waco, but that he was also a fool who let cowards, weaklings and informers into his cell, thus allowing a murderous government to blow out the support columns, killing the vast majority of people at a targeted federal building. They are natural born survivors and they do not care one bit if

the vast majority destroy themselves like lemmings or Gadarene swine running over the cliffs. After the collapse, they will destroy the last predators and life will go on, better than before, because they no longer have a burden of supporting those parasites, predators, and fools.

I sometimes wish I had kept my mouth shut and remained with them in anonymity.

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IF THERE EVER WAS SUCH A THING AS A 'CONSTITUTIONAL MILITIAMAN' then the time to be one has long since passed. It is time to become a modern militiaman, and provide for your own survival and that of the people you love. You have no business becoming involved in 'saving' a decaying civilization from itself. Your battle ahead lies in determining what shall arise from the wreckage.

--Martin Lindstedt,
Managing Editor, *Modern Militiaman*

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This issue can be found at:

Lindstedt's Linkages:

- Patrick Henry On-Line
- The Patriot Coalition

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The Articles of Alliance

July 4, 1997

Whereas it has become evident that legislation, legislative initiatives, and policies emanating from certain officials and agencies of the government of the United States, are destructive of the very liberties they were empowered to defend; perverting God given rights into mere privileges to be taken at whim, unjustly making war, killing and imprisoning those who would oppose them; we of the Militias of the united States have found it necessary to form a defensive Alliance.

We form this Alliance to defend the people from a tyranny that is supported by the mistaken belief that this nation is a democracy; thus allowing the destruction of our constitutional, representative republic, and our nation's descent into Statism. Additionally, we will defend against the further use of any situation as an excuse for the enemies of liberty to attack the Bill of Rights, or its defenders. Further, we pledge to protect this nation's sovereignty, and to restore our beloved government to its constitutional boundaries.

Therefore, we the Militias of the united States, do affirm before God that we have entered an Alliance against tyranny. That united, we will stand against all enemies of the Constitution and Bill of Rights, both foreign and domestic. We will consider passage of any laws that

restrict the several states civilian militia or violate the Constitution of the united States to be an act of war against the people of the united States. We also declare all current laws and statutes that violate our Constitution to be non-binding.

We will resist with force of arms the use of foreign troops, or the unconstitutional use of our armed forces, against the American people. We will consider it an act of war to surrender any more of the sovereignty of this nation to the United Nations. Thus, the Alliance will fight World Government, and any of its proponents, to the bitter end. While we will never make a first, or preemptive strike on the enemies of liberty, we will consider the planting of evidence, fabricating of evidence, or evidence gained through entrapment ... that is then used to imprison any citizen unjustly, to be an act of aggression against all the people of united States. An unwarranted, armed federal attack against any citizen, will be considered an attack against the Alliance and will be responded to by the Alliance. Plainly stated, any unlawful, unconstitutional action that deprives any citizen of life or liberty, will be an act of aggression against all the people, and will necessitate a response from the united States Militia Alliance.

Before our God, we do affirm an oath to each other to uphold this Alliance Agreement with our honor, wealth,

liberty, and lives. We pledge to set aside our personal welfare for the sake of the Alliance, our states, and nation. We will work together as brothers and sisters for the patriotic cause, knowing that with our unity and God's help, the victory is ours!

[Editor's Note: The above document is reproduced here as received from the United States Theatre Command, with the exception of having been re-formatted to better fit the page and rendered into a font which we felt more suitable for such a document. We also added a date to the document]

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Comments on the Alliance

by Norm Olson, Commander,

Northern Michigan Regional Militia

I have read the Articles of Alliance and agree with the purpose and intent. Certainly there needs to be cooperation among the various militias. As you may know, my intent in forging the idea of a 3d Continental Congress was to bring together the militias under a national command authority, subordinate to the Congress of the Provisional Government. While the Alliance achieves the generally intended amalgamation of state militia groups, it still lacks oversight by a Congress or Committee of Safety. Without that oversight, difficulty may arise in carrying out the actions alluded to in the document.

For example:

We pledge that the unwarranted use of deadly force against any militiaman, within the Alliance, will be considered an act of war that will bring a swift response from all the Alliance militias.

While I would agree with the general idea, I am troubled that "unwarranted" is too ambiguous and will lead to real problems in deciding whether the act that resulted in the death of a militia member would in fact bring a swift response.

Some questions that would need to be decided fairly rapidly would be:

1. Under what circumstances would deadly force be warranted?
2. If there were a question as to whether the death was warranted, who would decide if a collective response would follow?
3. If debate over whether a death was warranted or unwarranted were to occur, how could a response be swift?

As one might imagine, any action that results in the death of one militia member may be considered to be "unwarranted" by someone.

Obviously, those who perpetrated the action might think it justified, while those who might claim that "any action by an illegal government" constitutes "unwarranted action." As you can see, the term is not only ambiguous, but the conditions leading to a response are already determined before the event takes place.

Declaring that we WILL take a prescribed action eliminates our control of the response and the options available to us. We are locked in to either doing what we say we will do or be shown to be "paper tigers" if we don't. Without a unified command structure, the Alliance will be strained at the first situation where a militia member is killed, regardless of how it happens.

Perhaps rather than lay it out in terms that can cause division, other words might be better and less controversial, giving us more options and remedies without losing credibility IF WE DON'T react. While I won't argue that each and every militia member is valuable, the chances of an individual doing something that gets him killed is far higher than the chances that a well-regulated group will do so.

Consider for a minute this idea:

The corporate response by an alliance ought to be balanced so that "an Federal attack against any Alliance Militia will be considered as an attack against the Alliance and may be responded to by the Alliance." This caveat would prevent a war starting because one individual happened to be killed by a Barney Fife Sheriff's Deputy somewhere... (it happens....accidents happen). But by clarifying that a Federal Government attack on an entire body of militia would be an act of aggression against the Alliance, there develops a self-policing among militia organizations to

prevent (as best they can) an act that might provoke a federal attack. This also provides our local police (sheriffs and troopers) some breathing room IF, repeat IF, some boneheaded goober shoots one of our people. As in the case of Mike Hill, we didn't know the facts for some time and still don't since there are two sides of the story, but if another tragedy such as the Mike Hill murder were to happen, would we activate the entire Alliance? What if member groups refused to cross state lines for the sake of one person's death due to a stupid accident where possibly both individuals (the victim and the shooter) were equal and simply drew and started shooting?

Now compare that scenario with a large group. It would seem that if 100 ATF or FBI go marching in against a militia organization that is trying to abide by lawful and just rules while enjoying their rights enumerated in the Bill of Rights, I think it would be safe to say that an Alliance Response would be in order.

And IF such a situation were to take place, the determination of the REASON for a collective retaliatory response would be clearer.

Think about it. This issue is brought up NOT to stir up trouble, but to look at "choke points" that could cause a falling out or dissension over what might be considered a reason for a response and by whom.

Since this is an Alliance of Militia Organizations rather than a agreement of militia individuals around the country, it ought to focus on the organizations and not make a statement of intent to retaliate or avenge the death of a single individual. The principle is that we ought not make a threat we cannot and will not follow through on; for to do so limits our options and puts us in the corner strategically. It is better to have UNITED retaliation AS AN

OPTION, but it may be unwise to declare that it will be done in response to what may be argued to be an "unwarranted" death of a single individual.

Alliance leaders need to emphasize responsible and wise behavior by member organizations so that a member group doesn't do something that will bring contention and conflict between other member militias.

I urge member militia units to work together to establish some kind of unified command structure of people able to foresee and plan in advance of contingencies, take responsibility and command/control authority DURING, and rational responsive action FOLLOWING any possible contingency situation.

Something to think about. .

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FIJA MAKES IT HAPPEN!

by Dr. R. J. Tavel, J.D.

That simple statement, emblazoned on the front of the "big top" tent at the entrance to the grounds of HempAid '97, was the unifying theme for all of the glorious activities that took place in Vandalia, Michigan over the Memorial Day celebration. Throughout this working weekend, between 2,000 and 6,000 liberty-loving Hempsters heard, read and danced about freedom.

Liberty's Educational Advocacy Forum (Indiana's FIJA, Inc.) state coordinator R. J. Tavel, J.D. (rj@drtavel.com) sponsored the event for the benefit of Max Robinson's Hemp Museum (hempmusuem@surfnetinc.com) in Elkhart, Indiana. Max's inspired work brought 26 of the best bands and pot proponents in the country together to perpetuate the peace and love that inheres in the hearts of Hempsters. The "global village" being advanced everywhere would do well to pattern itself after the example of this gathering. A small city was created, complete with platting, infrastructure, inclement weather, minor medical emergencies, and, most of all, a deeply spiritual understanding of "community."

Last years' Labor Day event was threatened with police shut down when a local ordinance was advanced as a bar to such a gathering. "Madd Maxx" contacted R. J. who construed the law to exempt educational outreach organizations, like LEAF and FIJA, and thereafter assumed the mantle of sponsorship. Trumpeting a speakers list that heralded four attorneys from Indiana, Illinois and Michigan, the police decided to just hassle a few of the motorists on their way to last year's show. No police presence graced this years gathering. Security was provided by the Michigan Militia, armed with video cameras along the perimeter as well as patroling throughout the 35 acre camping facility. The leaders of the Militia were so moved by the message of individual power and responsibility that they took to the stage to speak after the first round of speeches by the headliners of the event, discussed below.

Readers who are visitors to "Dr. Tavel's Self Help Legal Clinic and Sovereign Law Library" (http://www.drtavel.com) will recognize this strategem as one of the many effective techniques touted to blunt the beast in its advance on our rights. Borrowing a premise from the early days of the Hemp Relegalization movement, specifically the smoke-ins, when you can organize a peaceful and substantial imposition upon the adminstrative aspects of governing, you can pretty much do whatever you wish without fear of police interference. Those who know their rights, effectively assert them and demand that the governors commit their allegedly scarce prosecutorial resources to deal with their number. FIJActivist leafletting outside courthouses across this land (see, http://www.drtavel.com/fijalink.htm), as well as Hempsters coming together to "learn to live the liberty they love" (see,http://www.drtavel.com/Hempage.html) openly challenge the system to oppress them further, thereby demonstrating the strength and character of these courageous advocates for self government.

HempAid '97 built on this success and bettered it by more effectively advertising the event and its location, in spite of the fact that Ben Masel and others operated competing events at the same time. Headlining HempAid '97 were R.J., Jack Herer ("the terror"), Chris Conrad, Elvie Musika and "The Last Free Man in America" the Honorable Gatewood Galbraith. Madd Maxx Robinson had previously gotten Gatewood and R.J. together as speakers for the Drug Policy Reform Conference St. Valentine's Day seminar at the Chicago Historical Society last February 14. After that event, Maxx knew that R.J. would never want to be scheduled to speak after Gatewood, since "Gatewood stops the show!" So Maxx arranged with the stage manager to put "Sponsor R.J." on between all bands and before each of the speakers, to introduce them, and forge an information flux illustrating the cohesiveness of content and conscience:

* Author of one of the most popular and exhaustive treatises on the Hemp Prohibition Conspiracy, "The Emperor Wears No Clothes," Jack Herer railed against the phenomenal growth of the prison industry and other economic aspects of the war on individual rights in the name of drug prohibition.

* Two time author and expert witness Chris Conrad extolled the commerical benefits, environmental, and personal virtues of cannibus production.

* Medical Marijuana patient and gifted singer Elvie Musika was in fine voice carolling compassionate care, continuing her valient effort to expand the dialogue on alternative medical treatment regimes.

* Gubernatorial candidate Gatewood Galbraith from Lexington, KY inflamed the passions of even the most passive pot smoker as he exhorted the crowd [to] block international inroads into rural America in the name of biodiversity.

* Bringing everyone's message into sharp focus, R. J. reminded the crowd that teaching the essential lesson of FIJA to everyone they know and love will open the now closed doors to the forums where public policy is determined without hearing all of the material facts. Peaceful productive people must be free to pursue justice in their daily lives with the confidence that, when "The Crown" becomes offended, resort may safely be had to a "jury of their neighbors" at a "trial by the country" in defense of freedom for all.

Should you be organizing an event like this in your area? Considering that Liberty's Educational Advocacy Forum raised $3,000 to donate to national FIJA and Laura Krihoe's Legal Defense Fund, everyone should answer this question with a big YES, and then get busy doing more. This kind of interdisciplinary event galvanizes patriots from all paths, and provides an occasion for putting up your best literature tables and practicing your outreach oratory, while raising vitally needed money from donations and sales of T-shirts, bumper stickers, books, tapes, videos, and FIJA flyers. .

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LAND-MINE LEGISLATION

By Claire Wolfe

IS YOUR CONGRESSPERSON THE ONE DOING THIS TO THE COUNTRY???

Let me run by you a brief list of items that are "the law" in America today. As you read, consider what all these have in common.

1. A national database of employed people
2. 100 pages of new "health care crimes," for which the penalty is (among other things) seizure of assets from both doctors and patients
3. Confiscation of assets from any American who establishes foreign citizenship
4. The largest gun confiscation act in U.S. history -- which is also an unconstitutional *ex post facto* law and the first law ever to remove people's constitutional rights for committing a misdemeanor
5. A law banning guns in ill-defined school zones; random roadblocks may be used for enforcement; gun-bearing residents may become federal criminals just by stepping outside their doors or getting into their vehicles.
6. Increased funding for the Bureau of Alcohol, Tobacco and Firearms, an agency infamous for its brutality, dishonesty and ineptitude
7. A law enabling the executive branch to declare various groups "terrorist" -- without stating any reason and without the possibility of appeal. Once a group has been so declared, its mailing and membership lists must be turned over to the government.
8. A law authorizing secret trials with secret evidence for certain classes of people
9. A law requiring that all states begin issuing drivers licenses carrying Social Security numbers and "security features" (such as magnetically coded fingerprints and personal records) by October 1, 2000. By October 1, 2006, "Neither the Social Security Administration or the Passport Office or any other Federal agency or any State or local government agency may accept for any evidentiary purpose a State driver's license or identification document in a form other than [one issued without a verified Social Security number and "security features"]."
10. And my personal favorite -- a national database, now being constructed, that will contain every exchange and observation that takes place in your doctor's office. This includes records of your prescriptions, your hemorrhoids and your mental illness. It also includes -- by law -- any statements you make ("Doc, I'm worried my kid may be on drugs," "Doc, I've been so stressed out lately I feel about ready to go postal.") and any observations your doctor makes about your mental or physical condition, whether accurate or not, whether made with your knowledge or not. For the time being, there will be zero (count 'em, zero) privacy safeguards on this data. But don't worry, your government will protect you with some undefined "privacy standards" in a few years.

All of the above items are the law of the land. Federal law. What else do they have in common?
Well, when I ask this question to audiences, I usually get the answer, "They're all unconstitutional."

True.

My favorite answer came from an eloquent college student who blurted, "They all SUUUCK!"

Also true.

But the saddest and most telling answer is: They were all the product of the 104th Congress. Every one of the horrors above was imposed upon you by the Congress of the Republican Revolution -- the Congress that pledged to "get government off your back."

BURYING TIME BOMBS

All of the above became law by being buried in larger bills. In many cases, they were what my friend, gun-rights activist Charles Curley, calls "Pearl Harbor Legislation" -- sneak attacks upon individual liberty that were neither debated on the floor of Congress nor reported in the media.
For instance, three of the most horrific items (the health care database, asset confiscation for foreign residency and the 100 pages of health care crimes) were hidden in the Kennedy-Kassebaum Health Insurance Portability and Accountability Act of 1996 (HR 3103). You didn't hear about them at the time because the media was too busy celebrating this "moderate, compromise" bill that "simply" ensured that no American would ever lose insurance coverage due to a job change or a pre-existing condition.

Your legislator may not have heard about them, either. Because he or she didn't care enough to do so.

The fact is, most legislators don't even read the laws they inflict upon the public. They read the title of the bill (which may be something like "The Save the Sweet Widdle Babies from Gun Violence by Drooling Drug Fiends Act of 1984"). They read summaries, which are often prepared by the very agencies or groups pushing the bill. And they vote according to various deals or pressures.

It also sometimes happens that the most horrible provisions are sneaked into bills during conference committee negotiations, after both House and Senate have voted on their separate versions of the bills. The conference committee process is supposed simply to reconcile differences between two versions of a bill. But power brokers use it for purposes of their own, adding what they wish. Then members of the House and Senate vote on the final, unified version of the bill, often in a great rush, and often without even having the amended text available for review.

I have even heard (though I cannot verify) that stealth provisions are written into some bills after all the voting has taken place. Someone with a hidden agenda simply edits them in to suit his or her own purposes. So these time bombs become "law" without ever having been voted on by anybody.

And who's to know? If congresspeople don't even read legislation before they vote on it, why would they bother reading it afterward? Are power brokers capable of such chicanery? Do we even need to ask? Is the computer system in which bills are stored vulnerable to tampering by people within or outside of Congress? We certainly should ask.

Whether your legislators were ignorant of the infamy they were perpetrating, or whether they knew, one thing is absolutely certain: The Constitution, your legislator's oath to it, and your inalienable rights (which preceded the Constitution) never entered into anyone's consideration.
Ironically, you may recall that one of the early pledges of Newt Gingrich and Company was to stop these stealth attacks. Very early in the 104th Congress, the Republican leadership declared that, henceforth, all bills would deal *only* with the subject matter named in the title of the bill. When, at the beginning of the first session of the 104th, pro-gun Republicans attempted to attach a repeal of the "assault weapons" ban to another bill, House leaders dismissed their amendment as not being "germane."

After that self-righteous and successful attempt to prevent pro-freedom stealth legislation, Congresspeople turned right around and got back to the dirty old business of practicing all the anti-freedom stealth they were capable of.

STEALTH ATTACKS IN BROAD DAYLIGHT

Three other items on my list (ATF funding, gun confiscation and school zone roadblocks) were also buried in a big bill -- HR 3610, the budget appropriation passed near the end of the second session of the 104th Congress. No legislator can claim to have been unaware of these three because they were brought to public attention by gun-rights groups and hotly debated in both Congress and the media. Yet some *90 percent* of all congresspeople voted for them -- including many who claim to be ardent protectors of the rights guaranteed by the Second Amendment.

Why?

Well, in the case of my wrapped-in-the-flag, allegedly pro-gun, Republican congressperson:

"Bill Clinton made me do it!"

Okay, I paraphrase. What she actually said was more like, "It was part of a budget appropriations package. The public got mad at us for shutting the government down in 1995. If we hadn't voted for this budget bill, they might have elected a Democratic legislature in 1996 - -- and you wouldn't want THAT, would you?"

Oh heavens, no! I'd much rather be enslaved by people who spell their name with an R than people who spell their name with a D. Makes all the difference in the world!

HOW SNEAK ATTACKS ARE JUSTIFIED

The Republicans are fond of claiming that Bill Clinton "forced" them to pass certain legislation by threatening to veto anything they sent to the White House that didn't meet his specs.
In other cases (as with the Kennedy-Kassebaum bill), they proudly proclaim their misdeeds in the name of bipartisanship -- while carefully forgetting to mention the true nature of what they're doing.

In still others, they trumpet their triumph over the evil Democrats and claim the mantle of limited government while sticking it to us and to the Constitution. The national database of workers was in the welfare reform bill they "forced" Clinton to accept. The requirement for SS numbers and ominous "security" devices on drivers licenses originated in their very own Immigration Control and Financial Responsibility Act of 1996, HR 2202.
Another common trick, called to my attention by Redmon Barbry, publisher of the electronic magazine, *Fratricide*, is to hide duplicate or near-duplicate provisions in several bills. Then, when the Supreme Court declares Section A of Law Z to be unconstitutional, its kissing cousin, Section B of Law Y, remains to rule us.
Sometimes this particular form of trickery is done even more brazenly; when the Supreme Court, in its *Lopez* decision, declared federal-level school zone gun bans unconstitutional because Congress demonstrated no jurisdiction, Congress brassily changed a few words. They claimed that school zones fell under the heading of "interstate commerce." Then they sneaked the provision into HR 3610, where it became "law" once again.
When angry voters upbraid congresspeople about some Big Brotherish horror they've inflicted upon the country by stealth, they claim lack of knowledge, lack of time, party pressure, public pressure, or they justify themselves by claiming that the rest of the bill was "good."
The simple fact is that, regardless of what reasons legislators may claim, the U.S. Congress has passed more Big Brother legislation in the last two years -- more laws to enable tracking, spying and controlling -- than any Democratic congress ever passed. And they have done it, in large part, in secret.

Redmon Barbry put it best: "We the people have the right to expect our elected representatives to read, comprehend and master the bills they vote on....If this means Congress passes only 50 bills per session instead of 5,000, so be it. As far as I am concerned, whoever subverts this process is committing treason."

By whatever means the deed is done, there is no acceptable excuse for voting against the Constitution, voting for tyranny. And I would add to Redmon's comments: Those who *do* read the bills, then *knowingly* vote to ravage our liberties, are doubly guilty. But when do the treason trials begin?

BILLS AS WINDOW DRESSING FOR AN UGLY AGENDA

The truth is that these tiny, buried provisions are often the *real* intent of the law, and that the hundreds, perhaps thousands, of pages that surround them are sometimes nothing more than elaborate window dressing. These tiny time bombs are placed there at the behest of federal police agencies or other power groups whose agenda is not clearly visible to us. And their impact is felt long after the outward intent of the bill has been forgotten.

- Civil forfeiture -- now one of the plagues of the nation -- was first introduced in the 1970s as one of those buried, almost unnoticed provisions of a larger law.

One wonders why on earth a "health care bill" carried a provision to confiscate the assets of people who become frightened or discouraged enough to leave the country. (In fact, the entire bill was an amendment to the Internal Revenue Code. Go figure.)
I think we all realize by now that that database of employed people will still be around enabling government to track our locations (and heaven knows what else about us, as the database is enhanced and expanded) long after the touted benefits of "welfare reform" have failed to materialize.

And most grimly of all, our drivers licenses will be our de-facto national ID card long after immigrants have ceased to want to come to this Land of the Once Free.

CONTROL REIGNS

It matters not one whit whether the people controlling you call themselves R's or D's, liberals or conservatives, socialists or even (I hate to admit it) libertarians. It doesn't matter whether they vote for these horrors because they're not paying attention or because they actually *like* such things.

What matters is that the pace of totalitarianism is increasing. And it is coming closer to our daily lives all the time. Once your state passes the enabling legislation (under threat of losing "federal welfare dollars"), it is YOUR name and Social Security number that will be entered in that employee database the moment you go to work for a new employer. It is YOU who will be unable to cash a check, board an airplane, get a passport or be allowed any dealings with any government agency if you refuse to give your SS number to the drivers license bureau. It is YOU who will be endangered by driving "illegally" if you refuse to submit to Big Brother's licensing procedures.

It is YOU whose psoriasis, manic depression or prostate troubles will soon be the reading matter of any bureaucrat with a computer. It is YOU who could be declared a member of a "foreign terrorist" organization just because you bought a book or concert tickets from some group the government doesn't like. It is YOU who could lose your home, bank account and reputation because you made a mistake on a health insurance form. Finally, when you become truly desperate for freedom, it is YOU whose assets will be seized if you try to flee this increasingly insane country.

As Ayn Rand said in *Atlas Shrugged*, "There's no way to rule innocent men. The only power government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws."

It's time to drop any pretense: We are no longer law-abiding citizens. We have lost our law-abiding status. There are simply too many laws to abide.

And because of increasingly draconian penalties and electronic tracking mechanisms, our "lawbreaking" places us and our families in greater jeopardy every day.

STOPPING RUNAWAY GOVERNMENT

The question is: What are we going to do about it?
Write a nice, polite letter to your congressperson? Hey, if you think that'll help, I've got a bridge you might be interested in buying. (And it isn't your "bridge to the future," either.)
Vote "better people" into office? Oh yeah, that's what we thought we were doing in 1994.
Work to fight one bad bill or another? Okay. What will you do about the 10 or 20 or 100 equally horrible bills that will be passed behind your back while you were fighting that little battle? And let's say you defeat a nightmare bill this year. What are you going to do when they sneak it back in, at the very last minute, in some "omnibus legislation" next year? And what about the horrors you don't even learn about until two or three years

after they become law?
Should you try fighting these laws in the courts? Where do you find the resources? Where do you find a judge who doesn't have a vested interest in bigger, more powerful government? And again, for every one case decided in favor of freedom, what do you do about the 10, 20 or 100 in which the courts decide against the Bill of Rights?

Perhaps you'd consider trying to stop the onrush of these horrors with a constitutional amendment -- maybe one that bans "omnibus" bills, requires that every law meet a constitutional test or requires all congresspeople to sign statements that they've read and understood every aspect of every bill on which they vote. Good luck! Good luck , first, on getting such an amendment passed. Then good luck getting our Constitution-scorning "leaders" to obey it.
It is true that liberty requires eternal vigilance, and that part of that vigilance has been, traditionally, keeping a watchful eye on laws and on lawbreaking lawmakers. But given the current pace of law spewing and unconstitutional regulation-writing, you could watch, plead and struggle "within the system" 24 hours a day for your entire life and end up infinitely less free than when you began.

Why throw your life away on a futile effort?

Face it. If "working within the system" could halt tyranny, the tyrants would outlaw it. Why do you think they encourage you to vote, to write letters, to talk to them in public forums? It's to divert your energies. To keep you tame.

"The system" as it presently exists is nothing but a rat maze. You run around thinking you're getting somewhere. Your masters occasionally reward you with a little pellet that encourages you to believe you're accomplishing something. And in the meantime, you are as much their property and their pawn as if you were a slave. In the effort of fighting them on *their* terms and with *their* authorized and approved tools, you have given your life's energy to them as surely as if you were toiling in their cotton fields, under the lash of their overseer.

The *only* way we're going to get off this road to Hell is if we jump off. If we, personally, as individuals, refuse to cooperate with evil. *How* we do that is up to each of us. I can't decide for you, nor you for me. (Unlike congresspeople, who think they can decide for everybody.)
But this totalitarian runaway truck is never going to stop unless *we* stop it, in any way we can. Stopping it might include any number of things: tax resistance; public civil disobedience; wide-scale, silent non-cooperation; highly noisy non-cooperation; boycotts; secession efforts; monkey-wrenching; computer hacking; dirty tricks against government agents; public shunning of employees of abusive government agencies; alternative, self-sufficient communities that provide their own medical care and utilities.

There are thousands of avenues to take, and this is something most of us still need to give more thought to before we can build an effective resistance. We will each choose the courses that are right for our own circumstances, personalities and beliefs.
Whatever we do, though, we must remember that we are all, already, outlaws. Not one of us can be certain of getting through a single day without violating some law or regulation we've never even heard of. We are all guilty in the eyes of today's "law." If someone in power chooses to target us, we can all, already, be prosecuted for *something*.

And I'm sure you know that your claims of "good intentions" won't protect you, as the similar claims of politicians protect them. Politicians are above the law. YOU are under it. Crushed under it.

When you look at it that way, we have little left to lose by breaking laws *creatively and purposefully*. Yes, some of us will suffer horrible consequences for our lawbreaking. It is very risky to actively resist unbridled power. It is especially risky to go public with resistance (unless hundreds of thousands publicly join us), and it becomes riskier the closer we get to tyranny. For that reason, among many others, I would never recommend any particular course of action to anyone -- and I hope you'll think twice before taking "advice" from anybody about things that could jeopardize your life or well-being.

But if we don't resist in the best ways we know how -- and if a good number of us don't resist loudly and publicly -- *all* of us will suffer the much worse consequence of living under total oppression.

And whatever courses of action we choose, we must remember that this legislative "revolution" against We the People will not be stopped by politeness. It will not be stopped by requests. It will not be stopped by "working within a system" governed by those who regard us as nothing but cattle. It will not be stopped by pleading for justice from those who will resort to any degree of trickery or violence to rule us.

It will not be stopped unless *we* are willing to risk our lives, our fortunes and our sacred honors to stop it.

I think of the words of Winston Churchill:

If you will not fight for the right when you can easily win without bloodshed, if you will not fight when your victory will be sure and not so costly, you may come to the moment when you will have to fight with all the odds against you and only a precarious chance for survival. There may be a worse case. You may have to fight when there is no chance of victory, because it is better to perish than to live as slaves.

# # #

NOTES on the laws listed above:

1. (employee database) Welfare Reform Bill, HR 3734; became public law 104-193 on 8/22/96; see section 453A.

2. (health care crimes) Health Insurance Portability and Accountability Act of 1996, HR 3103; became public law 104-191 on 8/21/96.

3. (asset confiscation for citizenship change) Same law as #2; see sections 511-513.

4, 5 and 6. (anti-gun laws) Omnibus Appropriations Act, HR 3610; became public law 104-208 on 9/30/96.

7 and 8. (terrorism & secret trials) Antiterrorism and Effective Death Penalty Act of 1996; S 735; became public law 104-132 on 4/24/96; see all of Title III, specifically sections 302 and 219; also see all of Title IV, specifically sections 401, 501, 502 and 503.

9. (de-facto national ID card) Began life in the Immigration Control and Financial Responsibility Act of 1996, sections 111, 118, 119, 127 and 133; was eventually folded into the Omnibus Appropriations Act, HR 3610 (which was itself formerly called the Defense Appropriations Act - -- but we wouldn't want to confuse anyone, here, would we?); became public law 104-208 on 9/30/96; see sections 656 and 657 among others.

10. (health care database) Health Insurance Portability and Accountability Act of 1996, HR 3103; became public law 104-191 on 8/21/96; see sections 262, 263 and 264, among others. The various provisions that make up the full horror of this database are scattered throughout the bill and may take hours to track down; this one is stealth legislation at its utmost sneakiest.

And one final, final note: Although I spent aggravating hours verifying the specifics of these bills (a task I swear I will never waste my life on again!), the original list of bills at the top of this article was NOT the result of extensive research. It was simply what came off the top of my head when I thought of Big Brotherish bills from the 104th Congress. For all I know, Congress has passed 10 times more of that sort of thing. In fact, the worst "law" in the list -- #9, the de-facto national ID card--just came to my attention as I was writing this essay, thanks to the enormous efforts of Jackie Juntti and Ed Lyon and others, who researched the law. Think of it: Thanks to congressional stealth tactics, we had the long-dreaded national ID card legislation for five months, without a whisper of discussion, before freedom activists began to find out about it. Makes you wonder what else might be lurking out there, doesn't it? And on that cheery note --

THE END

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New County Movement Threatens Establishment

- Citizens in Washington State work to reestablish primacy of local government -

We live in the era of big government: huge federal government, big state government, even big local governments. Citizens in Washington state, however, are using a provision in the state constitution to rein in government by seceding from their counties and forming new counties within the confines of the old parent counties.

Citizens committees to form new counties have sprung up across the state and are spreading like wildfire. There are nine new counties being proposed in Washington. Four of them have gained signatures from a majority of voters within their jurisdiction, which is required to break away. Five others are still collecting signatures but seem poised to soon achieve their goals.

Cedar, Skykomish and Freedom counties are being created out of King and Snohomish counties around Seattle. On the Canadian border, Pioneer County is being created out of Whatcom County. The five others are River (near Vancouver), Puget Sound, West Seattle and Vashon (near Seattle), and Liberty County (out of Grant County in central Washington).

Why are they seceding? Lois Gustafson, president of Cedar County Committee, says the bid to create new counties aims "to bring thegovernment close to the people." Joe Ahrend, of Citizens for River County, says "taxes are out of control. Every time someone wants to do something with their land it seems there's some endangered bug on it. We have no say on how money is spent, finally we said enough is enough." Amy Hansen of Skykomish County Committee says the movement is about "representation, local control, less bureaucracy, more responsive officials, and smaller government."

In the view of these leaders, county govemments have become too distant, too bureaucratic, too large, too meddlesome and too entrenched, and have forgotten that local officials are supposed to serve the people rather than other bureaucracies in Olympia and Washington, D.C. Many of the issues that have brought this movement into being involve restriction on development and use of private property.

Leaders say they plan to eliminate most of the local regulations. Another issue that has thrown the establishment into panic is the new county leaders' stated intent to reassert local control over things like law enforcement and education, which have come increasingly under control of state and federal government.The mission statement of Citizens for River County, for example, says that the new county will accept no federal or state education funds. Rather than trying to maintain an expensive public school bureaucracy, they say they will actually encourage alternatives like home schooling.

Secession as a Check on Government

It has-been said that the ultimate voting power is the power to vote with your feet. When governments become too burdensome, people leave their jurisdiction. To stem the loss of revenue government then either must become less burdensome, or extend its jurisdiction to make it impractical for anyone to leave. This being true, the easier it is to leave a government jurisdiction the less burdensome that government can be. The ultimate extension of this principle is the ability for small communities to leave a govemment's jurisdiction without having to move geographically.

As one would expect, the political establishment in Washington state does not look favorably on these movements, but supporters are using a provision of the Washington constitution which seems to allow for the

creation of new counties on fairly easy terms.

Article I 1, section 3 of the Washington constitution reads:

***New Counties**. No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefore and then only under such conditions as may be prescribed by general law applicable to the whole state.*

What is unique about this provision is that unlike many constitutions which require the permission of the old county in order to create a new one; here, all that is required is a petition by a Majority of voters in the territory to form the new county.

Theoretically, if you are not happy with the way your local government is running things, all you have to do is get together with a couple thousand of your neighbors, and you can secede and start your own county. It is never quite as easy as that. The political establishment in the state has being doing everything it can to prevent the formation of new counties.

The Establishment Fights Back

Although the secretary of state's office has certified that the petitions have achieved the number of signatures needed, the new counties cannot come into existence until the state legislature enacts legislation specifying how these splits are to take place. The legislature will divide up the assets and liabilities of the old county, and set the official county boundaries. Last spring, State Rep. John Koster, a Republican from the district of the proposed Skykomish County, introduced bills to bring into existence three of these new counties.

The bills faced the united opposition of Democrats in the state legislature, but Republicans have a majority in both houses. Nevertheless, Republican support for the new counties proved lukewarm. Only the one bill to create Skykomish County was actually brought up for a vote in the House, and passed. Pressure from Democrat Gov. Gary Locke prevented any such bill from being considered in the state Senate, despite its Republican control. One of the staffers on the committee handing the creation of new counties said he believes the passage of the Skykomish County bill through the House represented a sop thrown to supporters of the new counties rather than any senous, commitment from most members.

The official creation of the three counties remains in limbo until next year, when the state legislature can resurrect the measures. But supporters of the new counties insist that they will never rest until the new counties come into existence. The other proposed county with enough signatures, Cedar County, is pursuing a slightly different route. The Cedar County committee has maintained that the petition process constitutes a special election.

The committee has filed suit with the state Supreme Court, asking the court to order the secretary of state's office to certify the petition process as an election. They feel that if the process is certified as an election, the legislature will have no choice but to pass legislation bringing the county into existence. John Stokes, one of the founders of the new county movement, has taken an even more creative approach.

In a move which is controversial even within the new county movement, Stokes has filed a petition with the United Nations Human Rights Commission arguing that "the right of self-determination and self-government.are being denied by the state of Washington." Supporters hope the complaint will embarrass Gov. Locke enough to get him to drop his opposition.

While the opposition of the political establishment may delay the creation of new counties, it has done nothing to dilute the ardor of the new county movement. If anything, such resistance has energized the movement even more, and has shown the need for more representative government. Citizens for River County started their

movement in the summer of 1996 and in less than a year the committee has collected more than 4,000 signatures - about a third of the total needed.

Success Stories

While secession has always been opposed by existing establishments, there have been a couple of notable successes in recent years. In 1983, through a petition process very similar to that being used in Washington, the northern half of Yuma County, Ariz. broke away to form the new county of La Paz. The political establishment in Arizona apparently was caught off guard by the move and was unable to stop it. Nevertheless, after La Paz came into existence and it appeared that other counties might also break apart, the state changed its law to make county secession much more difficult.

Another success story in progress is the secession of the San Fernando Valley from the city of Los Angeles. Los Angeles has a population larger than many states, and larger than many countries; it is a huge, sprawling city. The size and population of the city has meant that local government does not really exist in the ordinary sense of the word. For years the population of San Fernando has sought to break away from Los Angeles and become its own city, but the Los Angeles city council has had veto power over loss of any section of the city.

Finally, this spring, because of public outcry, the city of Los Angeles has dropped its veto of the new proposal and is accepting a compromise bill in the California legislature, which will remove the veto power of the city council. Senate bill 176 and assembly bill 62 sailed through committee and seem ready to pass the full legislature, to be signed by Gov. Wilson. This proposal will allow San Fernando to secede from Los Angeles with a majority vote of the Los Angeles residents.

That vote is not assured, but supporters feel that they finally have a real chance.

Secession of any sort has never been easy. The American colonies fought a long war for their independence. Madison remarked in Federalist 14 that one of the advantages of the American federal system, provided for in Article 4 Section 3, was that when states became too populous for effective self-government they could divide and form new states.

Jealousy among states for representation in the Senate, and the desire of established governments to keep as many subjects as possible, has prevented this from happening. Nevertheless, on the local level we are beginning to see a revival of the old idea that self-government means local government.

At a time when politicians are increasingly moving towards large, centralized government, citizens are finding an effective tool in returning to smaller, more local government. The United States was founded on the idea of self-determination and local control - just maybe we have a chance to get back to it.

Paul Clark is chairman of the Coalition for Local Sovereignty, and tracks citizen efforts to gain more local control over their affairs. For more information on this burgeoning movement or related issues, contact Clark at 58 Crescent Road, Suite B, Greenbelt, MD. 20770, or call (301) 982-1360. .

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IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

TIMOTHY JAMES McVEIGH,
Petitioner-Defendant,

v.

Case No. 96-_____
(Case No. 96-CR-68-M below)
HONORABLE RICHARD P. MATSCH,
Respondent.

PETITION FOR WRIT OF MANDAMUS OF PETITIONER-DEFENDANT, TIMOTHY JAMES McVEIGH AND BRIEF IN SUPPORT

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FOR THE TENTH CIRCUIT
TIMOTHY JAMES McVEIGH,
Petitioner-Defendant,

v.

HONORABLE RICHARD P. MATSCH,
Respondent.

Case No. 96 (Case No. 96-CR-68-M below)

PETITION FOR WRIT OF MANDAMUS OF PETITIONER-DEFENDANT, TIMOTHY JAMES McVEIGH AND BRIEF IN SUPPORT

COMES NOW the Petitioner, Timothy James McVeigh, by and through the undersigned counsel, and moves this Court to:

1. Assume jurisdiction in this matter and issue a Writ of Mandamus to the respondent trial judge directing the respondent to enter the appropriate orders specifically requested herein; and

2. Issue a stay of the proceedings below pending resolution of this Petition in this Court or, in the alternative, allow jury selection to proceed on schedule, March 31, 1997, but stay the taking of evidence in the court below pending this Court's resolution of the Petition.

OVERVIEW

The McVeigh defense, based upon the material provided to it, suggests the following hypothesis: A foreign power, probably Iraq, but not excluding the possibility of another foreign state, planned a terrorist attack(s) in the United States and that one of those targets was the Alfred P. Murrah Building in Oklahoma City. The Murrah Building was chosen either because of lack of security (i.e. it was a "soft target"), or because of available resources such as Iraqi POW's who had been admitted into the United States were located in Oklahoma City, or possibly because the location of the building was important to American neo-Nazis such as those individuals who supported Richard Snell who was executed in Arkansas on April 19, 1995.

The plan was arranged for a Middle Eastern bombing engineer to engineer the bomb in such a way that it could be carefully transported and successfully detonated. There is no reported incident of neo-Nazis or extreme right-wing militants in this country exploding any bomb of any significant size let alone one to bring down a nine (9) story federal building and kill 168 persons. In fact, not even members of the left-wing militant groups such as the Weatherman were ever able to accomplish anything of this magnitude.

This terrorist attack was "contracted out" to persons whose organization and ideology was friendly to policies of the foreign power and included dislike and hatred of the United States government itself, and possibly included was a desire for revenge against the United States, with possible anti-black and anti-semitic overtones. Because Iraq had tried a similar approach in 1990, but had been thwarted by Syrian intelligence information given to the United States, this time the information was passed through an Iraqi intelligence base in the Philippines.

Operating out of the Philippines as a base, the state-sponspored [sic] terrorists, with the Murrah Building already chosen as the target, enlisted the support and assistance of members of the Radical American Right. The defense believes the evidence suggests that American neo-Nazis were chosen to carry out the bombing of the Murrah Building because of a shared ideological bent of hatred against the American government. It is possible that those who carried out the bombing were unaware of the true sponsor.

The evidence collected by the defense suggests that the desired ideology was found by the state-sponsored terrorists in Elohim City, Oklahoma, a small compound near Muldrow, Oklahoma, consisting of between 25 and 30 families and described as a terrorist organization which preaches white supremacy, polygamy and overthrow of the government. Elohim City was a haven for former members of The Covenant, The Sword and the Arm of the Lord ("CSA"), another extremist organization that had been raided by the federal government on April 19, 1995, exactly ten years to the day prior to the Oklahoma City bombing. One member of CSA turned on the organization and testified in court at the trial of Richard Snell and others who were charged in Arkansas with sedition in that they conspired to destroy the Alfred P. Murrah Building in Oklahoma City with a rocket launcher in the early 1980's. Snell was convicted on unrelated capital charges and sentenced to death in Arkansas. He was executed the day of the Oklahoma City bombing--April 19, 1995--and is buried at Elohim City. It is from this group of people that the defense believes that the evidence suggests foreign, state-sponsored terrorists groomed the most radical persons associated with Elohim City and extracted monumental revenge against the federal government by destroying the Murrah Building on the day of Richard Snell's execution and the anniversary date of federal raid.

But the defense hypothesis also entails evidence, very strong evidence, that the federal government, through the Bureau of Alcohol, Tobacco & Firearms, had an informant in Elohim City, an informant who warned federal law enforcement prior to April 19, 1995, that former residents, including the former chief of security, of Elohim City were planning to "target for destruction" federal buildings in Oklahoma, including the Alfred P. Murrah Building. The defense believes this scenario is true, that is is [sic] eerily similar to the World Trade Center bombing where the FBI had an informant infiltrate the terrorist group but failed to stop that criminal act, and that, absent judicial intervention, information concerning these matters in the possession of the federal government will be forever buried.

The defense for Mr. McVeigh is not engaged in a fishing expedition. As the information set forth in this Petition demonstrates, the McVeigh defense, using resources provided to it by the district court, has conducted a wide-ranging and increasingly narrow focused investigation. But without subpoena power, without the right to take depositions, and without access to national intelligence information, the McVeigh defense can go no further.

[CONTINUED IN PART THREE]

I. INTRODUCTION.

The Government of the United States is hiding from the defense and the trial court evidence and information that the government had a prior warning that the Alfred P. Murrah Federal Building in Oklahoma City (and possibly federal property in Tulsa) was very likely a target of a terrorist attack on or about April 19, 1995. This information came to the government from a variety of sources, including Carol Howe, a paid ATF informant for about 6 months, who infiltrated Elohim City and the Christian Identity Movement and who provided specific information prior to April 19, 1995, that an illegal German national, the grandson of one of the founders of the German Nazi Party, proposed to bomb federal buildings and installations and engage in mass murder. Information also came to the government through foreign intelligence services in the Middle East and from the government's own assets that an attack was being planned on the quot;heartland" of America.

The government responded to part of these warnings by conducting a superficial security examination of the federal building complex in Oklahoma City on the early morning hours of April 19, 1995.[1] But rather than admit that it acted, no matter how superficially or limited on this information, the government has chosen to deny, and maybe even withholding from the chief prosecutor, evidence of this prior warning from an informant it deemed reliable because she regularly passed polygraph tests. The defense has repeatedly sought by letter, motion, argument in chambers and in open court, detailed information which it knows the government has.

The district court has repeatedly advised the government, both in published opinions and in judicial statements, of the government's duty. The government has claimed it understood its duty. We submit the government has affirmatively misled the district court repeatedly on this subject, through prosecutors who may or may not know the truth. The government, in short, is stonewalling. The Defendant has made a sufficient showing below for a judicial order compelling the FBI, the Department of Justice, ATF, Department of State, the National Security Agency, and the Central Intelligence Agency to produce information to support the Defendant's claims which are a material part of his defense.

Timothy McVeigh's defense is that (1) he did not rent the Ryder truck (2) he did not assemble a bomb at Geary Lake State Park (3) he did not drive the Ryder truck to Oklahoma City, and (4) he did not detonate the bomb. There is a lack of credible government evidence to convince any fair-minded jury beyond a reasonable doubt that he did in fact do these things, and there is credible testimony and evidence known to the government and the defense which impeaches each of the government's claims down to and including who rented the truck the number of conspirators, where the bomb was assembled, and who left the truck after parking it in front of the Murrah Building. The information which will help to establish Mr. McVeigh's innocence in front of the jury, particularly in light of the recent bizarre disclosures by two thieves[2] masquerading as journalists, is uniquely in the hands of the government.

However, with the resources allowed it by the district court pursuant to the Crimes and Offenses Act of 1790 as modified by the Criminal Justice Act of 1963, the Defendant has made a substantial investigation and has produced volumes of evidence and specifications of materiality to the district court ex parse, in camera and on some occasions in open court or in camera with the prosecutors. The government's reaction has consistently been first to deny, then to produce a scant amount of information as the Defendant files formal motions, then to produce a little bit more just before the hearing, then to deny the existence of anything else,

then when the "anything else" surfaces, grudgingly to admit that it has been found. See D.E. 1918 at 6-35.

There is no better example of this than the government's submission to the defense in January, 1996 of a two-page FBI Insert of a conversation with Carol Howe in which she is not identified by her last name and every proper noun, including Dennis Mahon, Andreas Strassmeir, Elohim City, and the Reverend Robert Millar, is grotesquely misspelled so that it could not reasonably be found. D.E. 3313, Exhibit "D." Then, when this information surfaced, the government informed the Court that Ms. Howe had been an ATF informant until a date several weeks prior to April 19, 1995. See Transcript of Scheduling and Rule 17.1 Conference--Sealed, January 29, 1997, at 67. Then, when the defense discovered that in fact she had continued to be an informant after the bombing, the government acknowledged to the Court that in fact she had been an ATF informant in late April and early May 1995 and had been sent back to Elohim City.[3]

See D.E. 3360 at 2-4. The same pattern of disingenuous, economical-with-the-truth statements and representations by the government to the district court permeates its claims concerning FBI Laboratory material (now presumably largely furnished), prior warnings, possible foreign involvement, and other material. The Petitioner asks this Court to enter a Writ of Mandamus directing the District Court to enter an order commanding the government to produce the material requested in the manner outlined by the defense in sealed district court documents D.E. 2768 and D.E. 3123. The District Court has declined to do so. See D.E. 3016; D.E. 2840 (January 8, 1997 Pretrial Conference: Volume m--Sealed); D.E. 2866 (January 9, 1997 Pretrial Conference: Volume IV--Sealed); D.E. 3410 (March 10, 1997 Pretrial Hearing--Sealed--Not Provided to Defendant Nichols). The defense has made a sufficient showing under Brady and Rule 16 that the requested information is required in order to defend properly against the allegations in the Indictment and for a fundamentally fair trial in this capital case.

In order to file this Writ of Mandamus and make the appropriate allegations, most of the material relied upon originates from the public record, what has appeared in the press, and open judicial proceedings. In a few cases, names have been redacted or otherwise modified in order to protect the rights of other persons not on trial and to protect the security and secrecy of information.[4]

All of the documents filed under seal, some of which are ex parte, in camera pursuant to controlling caselaw, are identified by Docket Number ("D.E.") and within that Docket Number the exhibit number or page number so that the Court may quickly find the material.

This issue arrives before the Court at this late date simply because the defense has repeatedly gone to the government with information and requests, had to then seek intervention from the district court, and the last district court order has been issued within the last two weeks. D.E. 3410. The district court has denied defense motions for either a continuance or, in the alternative, a dismissal. Trial is now set to commence on March 31, 1997, with the selection of the jury. The defense moves that the Court, while considering this matter, either stay the commencement of the trial, or proceed with jury selection but stay the commencement of evidence being received until this matter has been resolved in this Court.

One hundred and sixty-eight people died in the Oklahoma City bombing. The devastation was total and complete. The public is entitled to accept the jury's verdict, whatever it is, with safety and confidence, bizarre press sensationalism and government stonewalling notwithstanding. The Petitioner is entitled to the relief set forth herein in order that he may meet the government's evidence.

[CONTINUED IN PART FOUR]

FOOTNOTES

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[1] Several witnesses interviewed by ABC News 20/20, including an attorney and a private process server, among others, claim to have seen law enforcement using sniffer dogs, as well as a "bomb disposal" or "bomb squad" unit truck near the Murrah Building in the early morning hours of April 19, 1995, shortly before the bombing. See attached Exhibit "D" (transcript of ABC News 20/20 broadcast, January 17, 1997). Oklahoma County Sheriff J.D. Sharp denied the presence of the Oklahoma County bomb squad truck, telling local media on the record that the county bomb truck was ten miles away from downtown and nowhere near the country courthouse. See attached Exhibit "E." However, the County Sheriff's office later stated that the bomb squad unit was in fact in downtown Oklahoma City the morning of the bombing for a routine training exercise. See attached Exhibit "H." This information was confirmed to the defense through discovery. See exhibits "J" and "K" The presence of the bomb squad truck was commented on by several other persons and mentioned in a business newsletter of one downtown Oklahoma City business. See attached Exhibit "F';; see also Exhibit "G" (news account of witness in Oklahoma City who recalled that, "The day was fine, everything was normal when I arrived at 7:45 to begin my day at 8:00 a.m., but as I walked through my building's parking lot, I remember seeing a bomb squad.")

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[2] In late January, one stole computer information by personally downloading from a defense lap top computer material he was not authorized to receive. The other secured the information by personal, unethical and immoral means plus theft, and then proceeded to embellish the stolen document with language found no place in the document which he mischaracterized (because it bore a computer generated logo "Attorney Work Product, Privileged and Confidential, Attorney/Client Communication") as coming from the Defendant. A Motion to Dismiss the Indictment and Abate the Proceedings Through a Change of Venue or Continuance was denied by the Respondent Trial Court on Monday, March 17, 1997. See D.E. 3429.

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[3] The government on background (see below) has confirmed details given to the Court in camera to ABC and NBC News. Hence the discussion here.

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[4] Information given to the media by the government or others, even if the substance of the same material was filed under seal, is included here because it is already in the public record through interviews with the media.

STATEMENT OF MATERIAL FACTS

II. PHYSICAL AND POLITICAL MAGNITUDE OF THE DESTRUCTION OF THE ALFRED P. MURRAH FEDERAL BUILDING.

A. Immediate Effects of the Explosion.

On April 19, 1995, at approximately 9:02 a.m. a "massive explosive" detonated outside the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. The shockwave of the explosion blew into and through the Murrah Building and scores of other buildings in the downtown Oklahoma City area, including the United States Courthouse located just one block away. D.E. 222 at 1. Alerted by the concussion of the blast, crowds of persons appeared from the areas surrounding the blast site and immediately began to tend to the injured, most cut by flying debris and still in uncomprehending shock at what had happened. Persons present near the explosion began to comprehend the scale of destruction that had occurred when they looked at the gaping ruins that moments before had been a federal office building--but which in a matter of seconds had been turned into a grave site for 168 federal workers with scores still trapped and injured in the collapsed, still smoking building.

When the explosion occurred, the United States Courthouse trembled one block away as if caught in an earthquake. Over one hundred 36" by 54" windows shattered and flew into the Courthouse. Id. Inside, heavy courtroom doors were jammed, courtrooms were flooded with broken glass, judges' chambers were turned into piles of plaster, fallen ceiling tiles, and broken glass. Shards of glass peppered and scarred desks, courtroom furniture, and walls. Inside the Courthouse and the remaining structure of the Alfred P. Murrah Building, there was pandemonium. People ran screaming from courtrooms, judges' chambers, and offices. The halls quickly became jammed with panic-stricken people and a stifling mixture of dust and acrid smoke. The Courthouse exits were destroyed, making evacuation excruciatingly slow for everyone. No one had any idea what had befallen them or those far less fortunate in the Murrah Building. Terror and shock permeated the Federal Courthouse, the trapped survivors of the Murrah Building, and the occupants of surrounding buildings. See D.E. 222 at 6.

The destruction of the Murrah Building, and the subsequent investigation by federal and state law enforcement, is simply unparalleled in American history. The resulting criminal prosecution of Timothy James McVeigh and Terry Lynn Nichols has resulted in an Indictment which accuses these two Defendants of participating in a crime which encompasses the intentional homicides of 168 people, inflicting injuries upon 503 others, damaging 320 structures in the area surrounding the Murrah Building, and being responsible for approximately $651 million dollars in recovery costs. D.E. 215 at 16.

This is a federal criminal case in which the able 53-year-old Republican Governor of Oklahoma, Frank Keating, stated that the bombing in Oklahoma City was unlike anything he had ever seen as an FBI Agent, U.S. Attorney, or law enforcement official in the Reagan and Bush Administrations. This is a case in which Kevin McNally, Federal Death Penalty Resource counsel, stated in a sworn affidavit that, to his knowledge, is the largest murder case in American history. Id.

This is a case which immediately captured the personal attention of the President of the United States, resulting in a trip to Oklahoma City by President Clinton to address survivors of the bombing and the nation.

This is a case in which a Federal Grand Jury met and a preliminary hearing was held on an Air Force Base amidst the chirping of a family of birds because the bombing had significantly destroyed the Federal Courthouse in Oklahoma City. See United States v. McVeigh, No. M-95-98-H, Transcript of Preliminary Hearing had on April 27, 1995 at 3. The magistrate presiding over the preliminary hearing noted with judicial understatement that this case presented "unusual circumstances." Id. at 4. Susan Otto, the Federal Public Defender for the Western District of Oklahoma, in support of a Motion to Transfer, stated that she had not found a case in the history of this country that was of such magnitude. Id. at 10. This is now a capital case involving multiple investigation sites including Oklahoma, Kansas, Michigan, Arizona, New York, Florida, as well as others worldwide.

This is a case in which Judge Russell, in granting the government more time to issue an Indictment, observed that the facts upon which the Grand Jury must ultimately base its determination are "highly unusual" and "complex"; that the April 19, 1995, bombing of the Murrah Building was an act of unprecedented terrorism resulting in a massive criminal investigation; that the criminal investigation has required the government to follow up more than 100,000 phone calls, analyze thousands of business records, and interview hundreds of witnesses and potential witnesses; and that there exists a huge volume of evidentiary material subject to a myriad of chemical and physical tests. See D.E. 107 (United States v. McVeigh, No. M-95-98-H, Order filed June 12, 1995 at 5).

Three of the most rarely granted defense requests in criminal litigation were granted in this case because of its unique nature. This Court, in considering a Petiton [sic] for Writ of Mandamus, removed the then-presidng [sic] Judge assigned to this case in the initial stages. See Nichols v. Alley, 71 F. 3d 347 (10th Cir. 1995). As a result of this Court's decision, the Chief Judge of this Circuit assigned Chief Judge Richard P. Matsch to preside over this litigation. See D.E. 711. After giving careful consideration to the facts of this case, Chief Judge Matsch changed the venue of the prosecution to Denver, Colorado (918 F. Supp. 1467 (D. Colo. 1996)), and subsequently granted the defendants' motions for a severance (169 F.R.D. 362 (D. Colo. 1996)). See D.E. 984; 2376. Timothy McVeigh will be tried beginning March 31, 1997. D.E. 3429

B. The Response of the Federal Government.

The prosecution in this case has at its disposal the resources of every federal, state, and local agency in the United States to interrogate, arrest, prosecute and convict those the Grand Jury charges with the bombing of the Alfred P. Murrah Building. The President of the United States pledged to send "the world's finest investigators to solve these murders." See D.E. 1079 at 10. Within hours of the President's statement, the Attorney General of the United States emphatically stated that "[t]he FBI and the law enforcement community will pursue every lead and use every possible resource to bring these people responsible to justice." Id. Innumerable federal agencies have participated in the investigation of this case.

The day after the bombing the New York Times reported as follows: From offices and bases around the country, government aircraft carried to Oklahoma City an array of federal law enforcement officials, emergency management personnel and military forces, an operation that constituted one of the vastest[sic] responses to a crime in American history.

A 24 hour FBI command center with 400 telephones was established in Oklahoma to coordinate the work of explosives teams, bomb technicians and portable scientific gear used to analyze chemical residues. D.E. 1079 at 10-11.

According to a May 31, 1995, "Nightline" broadcast interview of former FBI Assistant Director Buck Revell, ". . . when you have an event of [the Oklahoma City bombing's] magnitude, you have to cast a very broad net. " D.E. 1079 at 11. The President of the United

States "dispatched a small army of federal investigators to Oklahoma and pledged a relentless hunt for the killers." Id.

1. The Government's Immediate Response to the Bombing.

a. Mobilization.

The government began its search for suspects within minutes after the gravity of the Oklahoma City bombing became apparent. The White House Situation Room, the Federal Bureau of Investigation's (FBI) Command Center, the Central Intelligence Agency's (CIA) Watch Office, and other agencies' nerve centers undoubtedly monitored media reporting of the bombing and established communications with personnel located at or near the scene in Oklahoma City. D.E. 1079 at 2. Government agencies throughout the United States were alerted to the potential for similar attacks.

At the White House, a "crisis team" was convened in order to coordinate the intensive investigation. Id. at 13. This team, under the direction of the Justice Department, consisted of personnel from the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, the Secret Service, the Central Intelligence Agency, the National Security Agency, and members of the National Security Council. According to media reports, this crisis team was formed in the wake of the blast and met on Wednesday, April 19, 1995, via teleconference in Washington and convened again on Thursday morning at the White House. Id.

CIA spokesman David Christian has verified to the media that the agency was involved in the Murrah bombing investigation. Id In addition, the investigative machinery of U.S. military intelligence agencies has been utilized in this criminal case. One media source reported that "the nation's intelligence community, the CIA and defense intelligence officials, also will contribute information, and send their own agents overseas to work digging up leads, according to the law enforcement experts." Id.

Civilian and military intelligence agencies were placed on the highest alert here in the United States and similar warnings of impending attacks were forwarded to United States installations overseas. For example, The CIA's Directorate of Operations (DO) transmitted to stations and bases worldwide a high precedence cable instructing agency officers to query sources for information about the attack. The FBI's Counterterrorism Center issued a directive to all CIA stations to search their international sources for possible leads among foreign terrorist groups. Id. at 14.

Officers in the CIA Directorate's six overseas divisions immediately began arranging meetings and conducting debriefing sessions. The domestic arm of the DO - the National Resources (NR) Division - also began combing contacts for leads concerning the bombing. (NR Division's procedures for obtaining information are described in United States v. Reward, 889 F. 2d 836 (9th Cir. 1989), although NR is described therein as the Domestic Collection (DC) Division).

The CIA's sources include individuals holding positions in governments, military services, corporations, universities, political parties, and terrorist groups. Id. The agency's officers utilized both unilateral assets - those who are cooperating with the United States unbeknownst to their superiors; and liaison relationships - formal contacts between the CIA and foreign law enforcement, intelligence, and security agencies. Military Intelligence and the CIA similarly obtain information through the use of ostensibly private or commercial entities that are, in fact, intelligence platforms. Through liaison relationships, the government is also able to avail itself of the multitude of sources operated by foreign governments. See infra for description of assistance from Israel.

b. Evidence From Public Sources of Government Use of Intelligence Networks With Foreign Nations in the Investigation of the Alfred P. Murrah Building Bombing.

In its annual report, the State Department's Office of the Coordinator for Counterterrorism reports that the Clinton Administration is "deeply engaged in cooperation with other governments in an international effort to combat terrorism[.]" D.E. 1079 at 15. Such cooperation includes an "active network of cooperative relations with counterparts in scores of friendly countries" involving United States intelligence and law enforcement agencies. Id. The State Department's Office of the Coordinator for Counterterrorism conducts consultations on counterterrorism with many other governments including G-7 nations and the European Union. Additionally, there are now 11 treaties and conventions that commit signatories to combat various terrorist crimes. Id.

United States government agencies, including the CIA and FBI, maintain liaison relationships with many countries. The Supreme Court has recognized the existence of these relationships, as well as the United States government's receipt of information through such contacts. See Snepp v. United States, 444 U. S. 507, 512 (1980) ("[T]he CIA obtains information from the intelligence agencies of unfriendly nations and from agents operating in foreign countries"). The United States derives substantial information from these associations. These liaison relations would have provided numerous reports concerning the Oklahoma City bombing, possible motives for the bombing, and possible suspects other than Timothy McVeigh.

[CONTINUED IN PART FIVE]

PART FIVE OF EIGHTEEN:

In an interview on CNN on April 20, 1995, White House Chief of Staff Leon Panetta confirmed that the Justice Department was reviewing all of the intelligence network data in order to determine whether there are any leads. D.E. 1079 at 15. Mr. Panetta stated that the investigation into the bombing clearly involves looking at communications, both within the United States and outside the United States. Id. Also, CNN's State Department correspondent Steve Hurst stated that there was bound to be a volume of cable traffic coming into the State Department and into the CIA from stations abroad concerning information about the bombing. Presumably, Mr. Hurst is proficient and knowledgeable in the operations of the State Department, and his observations are supported by other media accounts establishing an FBI directive to CIA stations to search its international sources for possible leads among foreign terrorist groups. Id. at 16.

c. CIA and NSA Investigation Protocol.

In the immediate aftermath of the bombing, the CIA searched its databases for candidates who might have the means and motive to perpetrate the bombing. The databases were also used to verity the bona fides of sources providing leads. The CIA's stations and bases submitted numerous "name traces" on individuals as a result of the bombing investigation. These traces were requests for information on individuals, including those suspected of having knowledge of the bombing. Technical assets, such as global, regional, and local communication intercepts and reconnaissance satellites, were also used to obtain or verify information about the Oklahoma City bombing.[5]

The CIA's Counterterrorism Center was the focal point for all reports. The information gathered was then sent to government analysts and other official consumers, including the Justice Department. Id. at 16-17.

Also in response to the attack the National Security Agency (NSA) promptly supplemented their existing "watch list" for domestic terrorist threats with specific terms related to the Oklahoma City bombing, potential suspects and suspect organizations. Id. at 17. A watch list enables NSA listening posts to key on specific words spoken in their global net of intercepted oral communications. The National Reconnaissance Office (NRO) was also requested to assist in the investigation of the bombing by providing satellite photography. Id.

The NSA's sole reason for being is to intercept electronic messages worldwide and analyze these interceptions for useful intelligence and national security information. As reported by the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities: The National Security Agency was created by Executive Order in 1952 to conduct 'signals intelligence' including the interception and analysis of messages transmitted by electronic means, such as telephone calls and telegrams. D.E. 1079 at 17.

Lewis Allen, a General in the United States Air Force and then-Director of the National Security Agency, testified before the Committee that the "mission of the NSA was directed to foreign intelligence obtained from foreign electrical communications[.]" Id. But in delineating the scope of the NSA's mission, the Committee pointed out that the NSA has interpreted "foreign communications" to include communication where one terminal is outside the United States. Under this interpretation, the NSA has for many years intercepted communications between the United States and a foreign country, even though the sender or receiver was American. Thus, the full range of the NSA's sphere of interceptions is virtually unlimited and unchecked. Id. at 17-18. Yet, the NSA is allowed specifically by Executive Order to assist domestic law enforcement authorities and to participate in law enforcement activities to

investigate or prevent clandestine intelligence activities by foreign powers, or international terrorists or narcotics activities. Id. at 18 (Executive Order 12333).

With respect to methods of interception utilized by the NSA, a Senate Select Committee has reported the following: The use of lists of words, including individual names, subjects, locations, etc., has long been one of the methods used to sort out information of foreign intelligence value from that which is not of interest. In the past, such lists have been referred to occasionally as watch lists, because the lists were used as an aid to watch for foreign activity of reportable intelligence interest. However, these lists generally did not contain names of U.S. citizens or organizations. The activity in question is one in which U.S. names were used systematically as a basis for selecting messages, including some between U.S. citizens, when one of the communicants was at a foreign location. D.E. 1079 at 18.

The system and the procedure for selection and interception has been described in the Select Committee report on the handling of the "watch lists":The information produced by the watch list activity was, with one exception, entirely a byproduct of our foreign intelligence mission. All collection was conducted against international communications with at least one terminal in a foreign country, and for purposes unrelated to the watch list activity. That is, the communications were obtained, for example, by monitoring communications to and from Hanoi.

The watch list activity specifically consisted of scanning international communications already intercepted for other purposes to derive information which met watch list requirements. This scanning was accomplished by using the entries provided to NSA as selection criteria. Once selected, the messages were analyzed to determine if the information met those requesting agencies' requirements associated with the watch lists. If the message met the requirements, the information therein was reported to the requested agency in writing. D.E. 1079 at 18-19.

Significantly, the NSA's interception of international communications sometimes includes, either incidently [sic] or accidently [sic], communications between two American citizens if one of them happens to be abroad. Id. at 19. Thus, within hours of the bombing of the Murrah Building, the NSA's supplemented watch lists would have enabled the agency to pluck a huge amount of data from its incredible volume of global electronic interceptions. The result, within this agency alone, would have been a massive amount of relevant information concerning the bombing, none of which has been given to the defense in this case.

Procedures similar to the CIA's, NSA's, and NRO's for gathering information on the bombing were employed by foreign and domestic personnel of the Department of Justice and its enforcement agencies (the FBI, the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), and the U.S. Marshals); the Department of State's Bureau of Diplomatic Security (DS); the CIA's Office of Security (OS); the Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF, Customs Service (USCS)), Internal Revenue Service (IRS), and Secret Service (USSS); the Postal Service's Postal Inspectors; The Department of Defense's Armed Services, Defense Intelligence Agency (DIA), Naval Criminal Investigative Service, and the Defense Investigative Service, the General Services Administration's Federal Protective Service; the Department of Transportation's Coast Guard; and the Federal Aviation Administration (FAA). Other agencies, bureaus, and departments participated in the gathering of information as well. Personnel at all levels, suspecting the bombing to be a large scale terrorist attack resulting in numerous deaths, immediately mobilized all resources at the government's disposal. The result was a mammoth investigation without political or geographic limits. Id. at 19-20.

2. Evidence of the International Scope of the Investigation and the Involvement of Organs of State Intelligence in Several U.S. Domestic Bombing Cases Including the

Alfred P. Murrah Building.

The criminal investigation of this case included the use of the civilian and military branches of government; law enforcement, intelligence, and security agencies; foreign and domestic personnel and technical resources; and similar assets of other nations. The international scope of the investigation of this case is underscored by comments made by the Attorney General at an April 20, 1995, press conference:

> [*Reporter*]: The government of Israel has offered its help, because it has a vast experience with this sort of thing. Do you know if we are accepting that help? [*Attorney General Reno*]: We will, of course, rely on any additional resource that can possibly be involved and be utilized appropriately in bringing these people to justice. D.E. 1079 at 20.

In a 1981 Executive Order, President Reagan authorized agencies within the intelligence community to "participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers or international terrorist or narcotics activities[.]" Id. at 21 (Executive Order 12333, December 4, 1981). The intelligence community is also authorized to provide specialized equipment, technical knowledge or assistance of expert personnel for use by any department or agency or, when lives are in danger, to support local enforcement agencies. Thus, the Chief Executive of this country has authorized specifically the use of instruments of state intelligence to aid law enforcement agencies in investigating terrorist attacks.

The United States Department of State has acknowledged the federal government's use of intelligence organizations in response to terrorism: "A central element in the effective international effort to prevent and/or to bring about to justice those responsible for such attacks is the effective exchange of intelligence. The United States intelligence community is cooperating closely and effectively with other services as part of the international effort to identify those responsible[.]" Id. D.E. 1079 at 21.

In fact, a report issued from the State Department's Office of the Coordinator for Counterterrorism states: Because terrorism is a global problem, the Clinton administration is deeply engaged in cooperation with other governments in an international effort to combat terrorism: U.S. intelligence and law enforcement agencies have an active network of cooperative relations with counterparts in scores of friendly countries. D.E. 1079 at 21-22.

Such cooperative efforts have been further chronicled in the mainstream press: "In the bombing of the World Trade Center, in February 1993, the FBI, CIA and other agencies scoured the globe for leads and found many," Brian Duffy, et al., Extremism In America, U.S. New and World Report, May 8, 1995 at 30, and in the May 7, 1995, San Diego Union tribune article regarding the investigation into the car-bombing of a United States Navy captain - " [T]he CIA, the National Security Administration [sic], the Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service and local law-enforcement agencies were involved." See D.E. 1079 at 22.

As previously noted, after the bombing the initial "crisis team" assembled in the White House Situation Room consisted of personnel from the BATF, the FBI, the Secret Service, the National Security Agency, the Central Intelligence Agency, and members of the National Security Council. Id. at 22. Military officials from the defense intelligence agencies have participated in this investigation as well. Finally, the White House Chief of Staff, Leon Panetta, confirmed that the Justice Department conducted a review of data gathered from intelligence networks, including communications from both within the United States and outside the United States. Id.

Thus, from its very inception, the investigation launched by the federal government in this case has utilized the resources of the FBI and other domestic law enforcement agencies in tandem with the intelligence gathering entities of the federal government with the imprimatur of an executive order allowing such a symbiotic relationship. In the first 48 hours after the bombing, the domestic law enforcement and intelligence agencies of the federal government were mobilized and directed toward foreign terrorists (concentrating on those from the Middle East) with no limit on available manpower, assets, technology, and without regard to geographical borders.

3. The Investigative Focus Upon Foreign Terrorists.

News reports conclusively establish that the FBI's early analysis and the judgment of other counterterrorism experts pointed towards foreign responsibility for the Oklahoma City bombing. See D.E. 1079 at 23. CBS News reported shortly after the bombing that the FBI had received claims of responsibility for the attack from at least eight organizations. Seven of the claimants were thought to have Middle Eastern connections. D.E. 1079 at 23. Steven Emerson, an expert on Islamic Jihad said: "There is no smoking gun. But the modus operandi and circumstantial evidence leads in the direction of Islamic Terrorism." The government received calls from six people saying that they were from different Muslim sects and asserting that they were responsible for the bombing. Id. at 23-24.

On April 20, 1995, the New York Times reported that federal authorities opened an intensive hunt for the perpetrators of the bombing and "proceeded on the theory that the bombing was a terrorist attack against the government, law enforcement officials said." Id. at 24. The immediate speculation according to some experts, focused on the possibility that the attack had been the work of Islamic militants, similar to those responsible for the World Trade Center bombing in February of 1993. D.E. 1079 at 24.

John Magaw, director of the Bureau of Alcohol, Tobacco and Firearms, when asked whether his agency suspected terrorists, told CNN: "I think any time you have this kind of damage, this kind of explosion, you have to look there first." The FBI even went so far as to approach the Department of Defense about including Pentagon Arabic speakers in the investigative team. Former FBI Assistant Director in Charge of Investigation and Counterterrorism Expert Oliver "Buck" Revell, was quoted as saying, "I think what we've got is a bona fide terrorist attack." Mr. Revell went on to state, "I think it's most likely a Middle East terrorist. I think the modus operandi is similar. They have used this approach." D.E. 1079 at 24.

FBI officials in Washington, speaking anonymously, suggested strongly the investigations were focusing on Middle East terrorists . . . among the leads being investigated was a television report of three males of Middle East origin who rented a brown Chevrolet pickup at the Dallas-Fort Worth International Airport. Witnesses have reported seeing three men driving away from the blast area in a similar pickup. D.E. 1079 at 25.

An FBI communique that was circulated Wednesday suggested that the attack was carried out by the Islamic Jihad, an Iranian-backed Islamic militant group. The communique suggested the attack was made in retaliation for the prosecution of Muslim fundamentalists in the bombing of the World Trade Center in February, 1993, said the source, a non-government security professional. "We are currently inclined to suspect the Islamic Jihad as the likely group," the FBI notice said. See D.E. 1079 at 25. The FBI's suspicion of an Islamic Jihad connection would have been further reinforced by a sobering fact: Oklahoma City is probably considered one of the largest centers of Islamic radical activity outside the Middle East. Id. at 26. The extensive loss of life and the targeting of a federal facility motivated law enforcement, the military, and U.S. intelligence agencies to engage in the full range of overt and covert resources located throughout the world. Their mission was two-fold: stop other possible attacks, and identify the individuals and groups responsible for the Murrah Building bombing.

The government's far-reaching efforts in pursuit of Middle Eastern suspects in this case have become part of the public record. An affidavit of FBI Special Agent Henry C. Gibbons, filed in United States v. Abraham Abdallah Ahmed, No. M-95-94-H, W.D. Okla., April 20, 1995, strongly suggests intelligence assets are being used in the bombing investigation. See D.E. 1079 (Exhibit "E"). Gibbons' affidavit explains how a Jordanian American suspect's luggage was searched in Italy, and how the suspect was detained by British authorities and then forcibly returned to the United States. Id.

That a suspect of Middle Eastern origin was promptly apprehended confirmed the widely-held suspicion that a foreign terrorist group would be implicated in the bombing. According to the New York Times, Abraham Ahmed as "caught in the dragnet that spread around the world after the bombing." The newspaper went on to state:

> In his case, he was first singled out for attention in accordance with a general profile of possible suspects, including young men traveling alone to destinations like the Middle East. The profile was issued by the FBI to police agencies and airport authorities throughout the world. Mr. Ahmed lives in Oklahoma. He checked into O'Hare International Airport in Chicago on Wednesday night for a flight to Rome, with connections for a flight to Amman, Jordan. In addition to fitting the suspect profile, he was dressed in a jogging suit similar to one that a witness in Oklahoma City had reported seeing worn by a man at the scene of the explosion. D.E.1079 at 27.

The initial focus on foreign terrorist connections undeniably placed the intelligence community at the forefront of the investigatory efforts, since United States intelligence assets exist solely to protect against such foreign threats. Nor is the government's focus limited to the Middle East. The Sunday Times in London reported on February 4, 1996, that senior FBI sources have confirmed that the Bureau was "also pursuing inquiries into a possible neo-Nazi link between the Oklahoma City bombers and British and German extremists." D.E. 1079 at 27. Because of Defendant Terry Nichols' ties to the Philippines, within days of the bombing U.S. and Philippine officials began reconstructing his movements there.

An American Embassy legal attache interviewed Marife Nichols' father, Eduardo Torres, and showed him sketches of the two original bombing suspects. Id. at 27-28. Philippine intelligence agents briefly placed Mr. Torres under surveillance to make sure he was not involved with terrorism. Id. Clearly then, the tentacles of the federal government have reached out worldwide in the investigation of the bombing of the Murrah building. Compelled by the urgency of a grievous attack on the United States government itself, resources ordinarily dedicated to military and intelligence applications were brought to bear on a domestic criminal investigation. By the government's commitment of such resources to a criminal investigation, the Defendant becomes entitled to the product of these resources, so that they may be as fairly and justly applied to his defense as they are to his prosecution.

[CONTINUED IN PART SIX]

FOOTNOTES:

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[5] On May 10, 1995, the government, as part of its investigation of the bombing of the Alfred P. Murrah Building, enlisted the aid of the 1st Infantry Division at Fort Riley, Kansas, in obtaining Global Positioning System (GPS) readings for twenty (20) geographical sites. These readings were taken by the "Magellan GPS Nav 1000." The readings were taken "for possible satellite photograph requests[.]" D.E. 1079 at 16 n.7 (Exhibit "D").

PART SIX OF EIGHTEEN:

III. THE ARREST OF TIMOTHY MCVIEGH.

On April 21, 1995, federal law enforcement officials became unshakably focused upon Timothy McVeigh who was being held in the Noble County Jail in Perry, Oklahoma, on various state misdemeanor charges. See D.E. 1457 at 4.

Mr. McVeigh had been pulled over by an Oklahoma Highway Patrolman, Charles Hanger, on Interstate Highway 35 on the morning of April 19, 1995. McVeigh was driving a 1977 pale yellow Mercury Marquis, and was stopped by Trooper Hanger because the car McVeigh was driving displayed no license plate. McVeigh told Trooper Hanger that he was returning from Arkansas.[6] Hanger arrested McVeigh on the basis of the traffic violation and the state misdemeanor charge of carrying a weapon. McVeigh's yellow Mercury was left on the side of the highway and was not impounded.

Between April 19, 1995, and April 21, 1995, federal law enforcement officials traced a Vehicle Identification Number appearing upon the axle of the truck believed to have carried the bomb to a Ryder rental truck dealership in Junction City, Kansas. The FBI prepared a composite drawing of "unidentified subject #1" based upon descriptions provided by witnesses at the Ryder rental dealership. By showing the composite drawing to employees at various motels in Junction City, Kansas, the FBI "determined" that the drawing resembled a man named Timothy McVeigh that had been a guest at the Dreamland Motel in Junction City from April 14-18, 1995. A records check then revealed that a man named Timothy McVeigh was in custody in the Noble County Jail in Perry, Oklahoma, facing state misdemeanor charges.

The FBI, knowing their suspect was in custody at a small county courthouse in Oklahoma, proceeded to orchestrate what is now commonly referred to as the "perp walk" in which a criminal suspect is led away from confinement in shackles by law enforcement personnel for the media and all to see. The FBI was not disappointed. See D.E. 2825 at 7. Mr. McVeigh was detained in the courthouse while the world media gathered and his walkout was timed for the evening network news broadcast. With the nation, and indeed much of the civilized world watching, Timothy McVeigh, wearing a bright orange prison jumpsuit and no protective vest, shackled at the wrists and ankles, and wearing a militarystyle haircut and a "thousand yard" stare, was paraded before a mob of angry citizens, many of whom shouted repeatedly, "baby killer, baby killer" at him. This was how the Petitioner was transferred to federal custody.[7]

[CONTINUED IN PART SEVEN]

FOOTNOTES:

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[6] Evidence held by the government and Defendant clearly shows Mr. McVeigh traveled to and from Arkansas on a frequent basis.

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[7] The government claims the delay was caused by the wait for a Federal Warrant and a State Judge who granted Mr. McVeigh the opportunity to confer with a local attorney who had

repeatedly been blocked from seeing the Defendant by the local Assistant District Attorney. The attorney filed a Motion for Habeas Corpus to produce Mr. McVeigh for an interview which was granted. Thus, the delay was not caused by the Judge or the attorney, but the State prosecutor. A Federal John Doe 1 Warrant was already in place.

PART SEVEN OF EIGHTEEN:

IV. THE GRAND JURY RETURNS THE INDICTMENT OF "OTHERS UNKNOWN."

On August 10, 1995, a Federal Grand Jury sitting in the Western Judicial District of Oklahoma returned an eleven count Indictment accusing Timothy James McVeigh and Terry Lynn Nichols of conspiring to use a weapon of mass destruction, actual use of a weapon of mass destruction, destruction by explosive, and eight counts of first degree murder. (Indictment in CR95-110, filed August 10, 1995, no docket number assigned).

The Indictment alleges that McVeigh and Nichols constructed a truck bomb and on April 19, 1995, McVeigh parked the truck bomb directly outside the Alfred P. Murrah Federal Building during regular business and day-care hours. The Indictment then lists the names, spread out over six typewritten pages, of the persons present at the Alfred P. Murrah Federal Building on the morning of April 19, 1995, and who were killed as the result of the explosion. The Grand Jury found evidence that Timothy McVeigh and Terry Nichols conspired and agreed together with "others unknown to the Grand Jury" to use a truck bomb against the federal government, and specifically against the Alfred P. Murrah Building located at 200 Northwest 5th Street in Oklahoma City, Oklahoma, which resulted in the destruction of the building, grevious [sic] bodily injury to scores of persons, and the death of 168 persons. See Indictment at 1-2. This Indictment has never been withdrawn or modified.

Thus, the Grant Jury's allegation on the eve of trial is that this crime was committed and aided by "others unknown." By refusing to provide the requested discovery material, the government is attempting to prevent the Petitioner from learning the identity of what it calls "others unknown" but which the petitioner characterizes as "the unknown others."[8]

During the period of time that motions were pending for recusal of Judge Alley, Judge Alley refused to entertain or rule on any discovery requests by the Defendant. Thus, the government had an almost 4-1/2 month period after the return of the Indictment on August 10, 1995, in which it ignored existing judicial rules and took advantage of Judge Alley's statesmanlike decision not to rule on matters before him while motions for his recusal were pending. The government provided a microscopic amount of discovery consisting primarily of "statements of the Defendant" as required by the Federal Rules and access to some physical evidence.

In early January 1996, the government furnished Defendant's counsel all of the 302's then in existence concerning the following witnesses: Michael and Lori Fortier, Jeff Davis, Lea McGown, Vickie Beemer, Eldon Elliott, Tom Kessenger, and one Oklahoma City witness, Daina Bradley. However, before furnishing this information, the prosecution, in a letter to the defense claimed that the prosecutors had personally reviewed the 302's and that nothing in them was exculpatory. See D.E. 1923 (Exhibit "X'). This claim was fantastic and incredible on its face and totally incorrect. Each of the statements contained highly exculpatory Brady material and not just Giglio material. The government then proposed an oral reciprocal discovery agreement with the Defendant in which witness statements would be exchanged except for those witness statements taken by lawyers, even though FBI agents or defense investigators might be present.

The government also failed to provide Grand Jury testimony until prodded by the district court which directed the government to produce, first, the Grand Jury testimony of Michael and Lori Fortier. Finally, the government turned over Grand Jury testimony approximately four months before trial.

Massive litigation and hearings were required before the government turned over all FBI documents (or at least it represents that it has turned all of them over) relating to the Federal Bureau of Investigation Laboratory when the government prosecutors knew that serious allegations were being made and that an investigation was being conducted by the Inspector General which later validated a significant number of the allegations with respect to the handling, collection, analysis of evidence from the bomb site.

The government also delayed producing 302's, in some cases, more than a year after the 302 had been typed. The government's claims thus that it has produced unprecedented discovery are specious. It can be summarized as follows: The government gave the Defendant 100% of that which is irrelevant and withheld 95% of that which is relevant until, either by Court order or the threat of judicial action, it grudgingly began to flow the information to the Defendant, more than a year after the return of the Indictment. These assertions by the Defendant are well documented in the trial record below. See, e.g., D.E. 1310;1918.

V. THE "OTHERS UNKNOWN" TO THE GRAND JURY.

The theory of the prosecution in this case, not the Grand Jury's theory, is that the two named Defendants constructed a simple device capable of toppling a nine-story building at a public fishing lake and that one of them transported this device over two hundred miles without blowing himself up.

That is the heart of the prosecution's case. Any evidence concerning the participation of others, the complexity of the device, or foreign involvement takes away the heart of the government's case and there is therefore an institutional interest on the part of the government in keeping such evidence shielded from the defense and the public. But unfortunately for the government such evidence exists. One of the core allegations in the Indictment is that Timothy McVeigh rented a Ryder truck at Elliott's Body Shop in Junction City, Kansas. The evidence, however, negates McVeigh's presence and suggests instead the presence of two other suspects.

A. Elliot's Body Shop.

The government's theory is that Timothy McVeigh rented a Ryder truck from Elliott's Body Shop using the name "Robert Kling." However, three employees of Elliott's Body Shop each informed the FBI that "Kling" was accompanied by another man. Eldon Elliott met Robert Kling on Saturday, April 15, 1995, at approximately 8:45 a.m. See D.E. 1081 Exhibit "D." On this day, Kling was by himself, gave Elliott $281 to rent the truck, and told Elliott that he would pick the truck up on Monday at about 4:00 p.m. When Kling came into Elliot's on Monday there was, according to Elliott, a second individual with him. Id. at 2. Elliott described the person with Kling as a white male, 5'7" to 5'8", and wearing a white cap with blue stripes that headed front to back. He described Kling as a white male, 5'10" to 5'11", 180 to 185 lbs., with a medium build. Id.

Vicki Beemer, then the bookkeeper and counter clerk at Elliott's, told the FBI on the day of the bombing that a contract to rent a truck was executed on Monday, April 17, 1995 with Robert Kling. Id. (Exhibit "A"). She verified that Kling had reserved the truck and prepaid the contract with cash. Beemer told the FBI that she recalled a second person accompanying Kling but that she had no specific recollection of that individual. She stated that while she processed the contract another employee named Tom Kessenger was sitting in the office watching. Id.

Kessenger initially told the FBI that two males came into Elliott's and initiated a conversation with Vicki Beemer concerning a rental truck. See D.E. 3240 at 7, 10 (Hearing on Motions to

Suppress Eyewitness Identification--Volume I, February 18, 1997). Kessenger stated that Robert Kling was accompanied by the individual that later became known worldwide as John Doe 2. Id. at 10. He described this person as wearing a black t-shirt, jeans, and a ball cap colored Royal blue in the front and white in the back. Id. at 11. He also stated that John Doe 2 had a tattoo on his upper left arm. However, Kessinger has testified that a year and half after he first saw John Doe 2 at Elliott's Body Shop, the government convinced him that he had made a mistake and identified another person who rented a truck on April 18, 1995. Id. at 15-16. He described Kling as 5'10", weighing 175 to 185 lbs., green or brown eyes, and with a rough complexion or acne. Id. at 9; D.E. 1458 (Exhibit "F)."

Although Elliott and Kessenger may have been describing the same person they saw and knew as Robert Kling--it is clear that neither was describing Timothy McVeigh. At the time that McVeigh was booked into the Noble County Jail on April 21, 1995, he weighed 160 lbs., stood 6'2", his eyes were blue, and his complexion was clear. See D.E. 1457 at 6. In addition, the government and defense both have, and it has been referenced in open court proceedings, a video tape of the accused at McDonald's on I-70 in Junction City, a mile and a third away from Elliott's Body Shop. The accused is seen at McDonald's between 3:55 and 4:00 p.m. wearing clothes completely different from those ascribed to Robert Kling. The accused is supposed to have traveled the 1.3 miles on foot, in less than 20 minutes, and somehow or the other along the road, changed clothes.

B. Oklahoma City Eyewitness.

The government has announced that it will not call a single identification witness from Oklahoma City. The government has declined to do so for a very good reason--all of them undercut the government's theory of the case; perhaps none more so than the dramatic story of a young woman who was trapped in the rubble of the Murrah Building, had to have a leg amputated, and lost her mother and two children in the bombing. Her sister was also injured but survived. See D.E. 2191 (Exhibit "Y"). She was first interviewed by the FBI on May 3, 1995, at the hospital and then again on May 21, 1995.

She was also interviewed by the Defendant and several reporters. Her story is consistent in all accounts. She stated that she left her home in Oklahoma City at approximately 7:15 a.m. on the morning of April 19, 1995, to go to the Social Security Office. She went with her mother, two children, and her sister. Id. She recalled standing in the lobby of the Social Security Office in the Murrah Building near a large window facing Fifth Street when she looked out the lobby window and saw a Ryder truck pull into a parking place in front of the building between two cars. After the truck parked, she then observed an individual exit the passenger side of the Ryder truck and start walking away. She stated that she observed a side view of the person and described him as an olive-skinned (he looked also like he was tanned), white male, wearing a baseball cap with black, clean cut hair, with a slim build and also wearing jeans and a jacket. She observed the man walking very fast, heading west, toward Harvey Street. Id.

The next thing she remembered was feeling what she described as electricity running through her body and then falling into rocks. While she was in the hospital convalescing from her injuries, the FBI showed her a sketch consisting of frontal view of a man wearing a hat--John Doe 2. She told the FBI that the unknown male that she saw looked similar to the man in the sketch. D.E. 2191 (Exhibit "Y" at 2).

C. Jeff Davis.

The government contends that "Robert Kling," the same person who rented the Ryder truck from Elliott's Body Shop and who is alleged to have been Timothy McVeigh, placed an order for Chinese food at the Hunam Palace Restaurant in Junction City, Kansas, on April 15, 1995. D.E. 2166 at 13. The telephone call to the restaurant allegedly originated from room # 25 at

the Dreamland Motel which was the room allegedly occupied by a guest who claimed to be Timothy James McVeigh.

The restaurtant [sic] dispatched a delivery driver, Jeff Davis, to deliver the order to room # 25 at the Dreamland Motel. Davis has been interviewed several times by the FBI and has consistently maintained that the person he delivered the food to was not Timothy McVeigh. See D.E. 2482 at 10, Exhibit "P." Davis has described the person to whom he delivered the food order as having hair that was "unkept." Timothy McVeigh, a decorated Gulf War veteran, keeps his hair short and neat. Davis recalled that the person at the Dreamland had a very slight overbite. Timothy McVeigh does not have an overbite. Davis recalled that the person at the Dreamland had a regional accent, possibly from Oklahoma, Kansas or Missouri. Timothy McVeigh was born and raised in New York. Davis has stated to the FBI point blank that the person he saw and heard at the Dreamland Motel four days before the bombing of the Murrah Building was not Timothy McVeigh. In addition, although the government contends that Timothy McVeigh occupied room # 25 at the Dreamland Motel, his fingerprints were not found in the room. D.E. 2482 (Exhibit "GG").

In addition, there is evidence that a Ryder truck was seen at the Dreamland Motel-only it was seen on Easter Sunday, April 16, 1995, by at least four witnesses, Eric and Lea McGown, David King, and King's mother--one day prior to Monday, April 17, 1995, the date the government alleges that Timothy McVeigh and John Doe 2, using the name "Robert Kling," rented a Ryder truck from Elliott's Body Shop. D.E. 2191 at 36-37. The date is indelible in the memory of Lea McGown, the manager of the Dreamland Motel, because she leaves her hotel only twice a year--at Christmas and Easter. April 16, 1995 was Easter Sunday. Id. None of the individuals have been interviewed by the Defendant, but several have been interviewed by the media and their statements are a matter of public record.

D. Frederick Schlender.

The government alleges that Terry Nichols and Timothy McVeigh purchased two tons of ammonium nitrate fertilizer from a farm cooperative in McPherson, Kansas. See Indictment at 3, 4. The government's theory is that the 4,000 lbs. of ammonium nitrate purchased at the McPherson Co-Op was used as a component of the bomb that destroyed the Murrah Building. See D.E. 2166 at 9 (Hersely Grand Jury at 45). Two separate purchases are alleged--one on September 30, 1994 and another on October 18, 1994. See Indictment at 34.

Frederick Schlender was employed at the McPherson Co-Op during the time of the purchases of the ammonium nitrate. See F. Schlender Grand Jury Transcripts at 6-9. No employee at the Co-Op is able to describe the individuals who made the September 30, 1994, purchase. In his interviews with the FBI and in his testimony in open court, Schlender was able to recall the two men who made the purchase on October 18, 1994, as well as the vehicle used to transport the ammonuim [sic] nitrate. D.E. 3263 at 606 07.

He recalled that the purchase was made by two men driving a pickup truck with a red trailer hitched on the back. Although he gave a description of the pickup truck that was inconsistent with the truck owned at the time by Terry Nichols, and neither Defendant owned or used a red trailer, he was able to recall that the driver of the truck may have been Terry Nichols, but stated unequivocally that neither the driver nor the passenger was Timothy McVeigh. D.E. 3263 at 613, 659. The witness testified to the same facts at an open court hearing.

The government claims to have a receipt with Tim McVeigh's fingerprints on it. This receipt allegedly is for the purchase of ammonium nitrate. Leaving aside the question that it is highly debated whether the bomb in fact was made of ammonium nitrate, since clearly Mr. McVeigh was not present when the ammonium nitrate was purchased, it is possible it was purchased by Terry Nichols for innocent reasons (the government has evidence that Terry Nichols packaged

ammonium nitrate in small bags and sold them at gun shows) and that Mr. McVeigh, an acknowledged friend of Mr. Nichols, may have in fact innocently touched or handled the receipt.

E. Legal Significance of the Existence of "Others Unknown."

Even if, for purposes of this Petition, one assumes that Terry Nichols was involved in the planning and/or commission of this crime, there are possibly as many as four others still unknown. The identities of these persons may be the difference between a conviction and an acquittal in this case, are literally a matter of life and death, are not explained by the government, and the defense believes that, in light of the massive federal resources devoted to this case by the government, the government possesses information which would shed light on the identities of these persons. But Absent a direct court order compelling the government and its agencies to produce the information to the defense, the truth will never be known. The bureaucratic instinct for self-preservation and the institutional pressures for a neat and tidy conviction in this case ensure that, in the absence of coercion from this Court, information vital to the defense will simply never see the light of day.

[CONTINUED IN PART EIGHT]

FOOTNOTES:

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[8] The government has claimed below, and will undoubtedly assert here, that it has provided "unprecedented discovery" and gone far beyond what the rules and case law require. That claim is hollow and empty. Chief Judge David Russell of the Western Judicial District, before the return of the Indictment, attempted to schedule a discovery conference in order to facilitate the orderly flow of discovery, but the government refused to attend. The defense was willing to attend. Upon the return of the Indictment, the standing orders of the Federal Judges in the Western Judicial District, where the case was pending, were blithely ignored. The dear mandate of former Chief Judge Daugherty's orders, which are precedent in the Western District and found at United States v. Penix, 516 30 F. Supp. 248, 255 (W.D. Okla. 1981) were ignored.

PART EIGHT OF EIGHTEEN:

VI. PRIOR WARNING, ATF INFORMANTS, AND POSSIBLE "OTHERS UNKNOWN."

A. Elohim City.

Elohim City is a 240 acre compound near Muldrow, Oklahoma, consisting of between 25 and 30 families. D.E. 2482 at 19. Elohim City is listed in the publication Terrorist & Extremist Organizations In The United States at 109. According to this publication, Elohim City preaches white supremacy, polygamy and the overthrow of the government. Elohim City is also closely aligned with the extremist The Covenant, the Sword and the Arm of the Lord (CSA) and has been known to store weapons for that group. D.E. 2482 at 19.

The spiritual leader at Elohim City is the Reverend Robert Millar. Elohim City had a close association with the Christian Identity Movement and The Covenant, the Sword and the Arm of the Lord which had its own grievance against the United States government. See D.E. 2191 at 33. The federal government conducted a raid on the CSA on April 19, 1985--exactly ten years to the day prior to the Oklahoma City bombing. See Id. at 33-34; D.E. 2840 (Pretrial Conference: Volume m--Sealed, January 1997 at 181).

Members of the CSA now reside at Elohim City. One of the members of CSA turned on the organization and testified at the trial of Richard Snell in Arkansas. Snell was on trial with others on charges of sedition--that they conspired to destroy the Murrah Building in Oklahoma City with a rocket launcher in the early 1980s. Id. Snell was convicted on unrelated capital charges, sentenced to death in Arkansas, and was executed on the very day of the bombing in Oklahoma City--April 19, 1995. Id. One of his last statments [sic] before he was executed was, "Governor, look over your shoulder, justice is coming." D.E. 3410 at 16 (Pretrial Hearing--SEALED--Not Provided to Defendant Nichols, March 10, 1997). (Information in public press reports). His body is buried at Elohim City.

The government has alleged in the Indictment that the Defendants used a calling card, referred to as the Bridges' Spotlight card, as a means to prevent calls from being traced. See Indictment at 2. Phone records of the Bridges' Spotlight debit card reveal that a call was made from a motel in Kingman, Arizona, to Elohim City minutes before a call was made to a Ryder Truck rental store in Arizona. According to residents at Elohim City, the caller asked to speak to an individual named Andy Strassmeir. Around the same time from the same motel and again with the Bridges' card, nine calls were placed to a National Alliance Office in Arizona. The National Alliance is an organization headed by William Pierce, author of The Turner Diaries--the book characterized by the government as the "blue print" for the Oklahoma City bombing. See D.E. 2166 at 16.

In addition to the alleged phone call to Andy Strassmeir at Elohim City from someone allegedly using the Bridges' calling card, Strassmeir acknowledged meeting Timothy McVeigh at a gun show in Tulsa, Oklahoma in 1993. D.E. 2331 (Exhibit "2" FBI 302 D-12993). Although Strassmeir stated that he was unsure of the exact date of the meeting, he did recall that it took place sometime between the start of the federal raid on the Branch Davidian compound in Waco, Texas, February 28, 1993, and the conclusion of the standoff on April 19, 1993. Id. Strassmeir acknowledged that he attended gun shows with other residents at Elohim City where he was living at the time. He stated that he resided at Elohim City for approximately four years, leaving in August 1995.

Dennis Mahon, who now lives in Tulsa, Oklahoma, where Strassmeir says he met Timothy McVeigh, ran "dial a racist" hotline and would often visit Elohim City to engage in paramilitary training. D.E. 3123 (Exhibit quot;A"). As will be detailed below, a confidential ATF informant has reported that Mahon and Strassmeir discussed "targeting federal installations for destruction," such as the Tulsa IRS Office, the Tulsa Federal Building, and the Oklahoma City Federal Building. According to the ATF informant, Mahon and Strassmeir made at least three trips to Oklahoma in November 1994, December 1994, and February 1995. Id.

Elohim City also housed four of the six individuals arrested and charged with a series of mid-western bank robberies which allegedly were made in the name of "Aryan Revolutionary Army."[9] The four individuals arrested and charged in a series of mid-western bank robberies described themselves as members of the Aryan Revolutionary Army.

The Grand Jury charged the gang of robbers were Richard Lee Guthrie, Jr., Kevin McCarthy, Scott A. Stedeford, Peter Langan, Mark Thomas and Michael Brescia. D.E. 2191 at 17. Richard Lee Guthrie, Jr., committed suicide (allegedly) in his jail cell in Ohio after entering a plea of guilty and offering to cooperate with the federal government in the prosecution of the remaining three. Two of the remaining six, Kevin McCarthy, Scott Stedeford, have ties to Elohim City in that they lived there for several months as did Brescia. Mark Thomas, the leader of the Posse Comitatus in Pennsylvania and an Aryan Nations member, and who was close to two of the mid-west bank robbers, was in Elohim City on the Thursday before the bomb attack on Oklahoma City. D.E. 2191 at 34. Mark Thomas allegedly introduced the four of them to each other in either Eastern Oklahoma or Western Arkansas in 1994. Id.

In the Winter of 1994, or the Spring of 1995, but in any event, before the April 19, 1995, Oklahoma City bombing, federal officials were actively planning a raid on Elohim City. If Elohim City was aware of the raid, then Carol Howe's information that they would strike first and attack the federal government was a real potential. Elohim City knew, or at least strongly suspected, there would be a raid because Rev. Millar admitted his fears and apprehensions to two local sheriffs. Elohim City also had located a series of "spotters" who would advise them of approaching suspect vehicular traffic. Millar also complained of an increase in aerial over-flights of Elohim City and the community also monitored police scanners.

Thus, in the weeks before April 19, 1995, Elohim City (1) was populated by several individuals who later were indicted for armed bank robbery involving the use of bomb threats; (2) was populated by individuals who previously had engaged in armed confrontation with the federal government, exactly ten years before; (3) had avowed it would not be another Waco and would strike first in a "Holy War"; (4) knew that the federal government was actively planning a raid; (5) was populated by people committed to its belief of Christian Identity, including neo-Nazis with training manuals on how to make ammonium nitrate bombs.

Finally, there was one other element present at Elohim City, the significane [sic] of which has not been fully appreciated. It may be a far reach to make a connection between Elohim City and the Oklahoma City bombing to Iraq or Iran, but the reach is not far at all. Present at Elohim City was a German national with a commitment to neo-Nazism and an individual who already had demonstrated a willingness to break the law by overstaying his visa, and by assuming the identity of another and driving through Eastern Oklahoma with books in his car on how to make a bomb.

Also present at Elohim City was Dennis Mahon who once described himself as "the master of all disguises." Mahon is a world traveler with extensive trips to Germany and efforts to enter Canada and the United Kingdom. Mahon was the facilitator. Where does all this leave Tim McVeigh? Is he a part of this? The evidence suggests not and certainly the defense will contend that he is not. Tim McVeigh is the classic example of the right man at the wrong place

at the wrong time. Eyewitnesses may place him at places, but the eyewitnesses' accounts are variable and changing. What is missing is the physical evidence and other evidence that ties him to the crime. Ideology is not proof of complicity or involvement in terrorist attacks.

In addition, April 19 was the date of the execution of Richard Snell, soon to be buried in Elohim City. The same Snell who had previously planned and considered a rocket launched attack on the Murrah Building which would destroy it. Thus, the persons responsible for the Murrah Building bombing were alerted, ready, armed, committed, and poised to strike. And strike they did. The government had knowledge from an informant plus knowledge it would obtain from simple, ordinary analysis of the criminal intelligence available to it. It conducted a somewhat superficial security search of the federal property in downtown Oklahoma City and found nothing. When the bomb went off, federal authorities were first stunned and then realized that they did in fact apprehend the danger and had conducted a limited physical inspection, but to admit such prior knowledge and such limited physical search would be to face congressional inquiry and public outrage of such ferocity that confidence in American government would be badly shaken. April 19, 1995, was December 7, 1941, the Pearl Harbor strike, and December 21, 1988. the bombing of Pan Am 103, all over again.

[CONTINUED IN PART NINE]

FOOTNOTES:

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[9] Among the residents of Elohim City, two have a striking physical resemblance to Timothy James McVeigh and another has a strong physical resemblance to the person the government describes as John Doe No. 2.

PART NINE OF EIGHTEEN:

B. Dennis Mahon. Andreas Strassmeir and Carol Howe.

1. Dennis Mahon.

Dennis Mahon is a virulent racist and avowed enemy of the U.S. government. He is the No. 3 person in authority in the White Aryan Resistance movement led by Tom Metzger. D.E. 2191 at 10. There are videotapes featuring Mahon, in full Ku Klux Klan uniform, lighting a cross at a Klan recruiting trip in Germany, and yet another videotape of Mahon firing a semi-automatic rifle during paramilitary training for Klan members. Mahon conducted a "tour" in Germany in order to recruit other right-wing extremists. The costs of the trip were split between Mahon and his "German supporters." Mahon joked that if he was fined the usual 1,000 Deutsche Marks (approximately $600) for every time he gave the Nazi salute, he would owe 10,000,000 Marks, explaining "I gave hundreds while I was there."

Mahon is headquartered in Tulsa, Oklahoma, and has referred to the Oklahoma City bombing as a "fine thing" and stated further, "I hate the federal government with a perfect hatred . . . I'm surprised that this [the bombing] hasn't happened all over the country." He has further been quoted as saying that "all methods are legitimate to save your nation." D.E. 2191 (Exhibit "M").

The Iraqi government has given Dennis Mahon thousands of dollars over the past six years. Mahon has admitted to receiving money from Iraq approximately once a month and stated that "it's coming from the same zip code where the Iraqi Embassy is, but they don't say it's from the Iraqi Embassy." The money started arriving in 1991 after Mahon started holding rallies protesting the Persian Gulf War. Mahon is a close friend of Andreas Strassmeir, the ex-head of security at Elohim City and Mahon has lived at Elohim City.

During Operation Desert Storm, Mahon produced several videotapes which were distributed to public access television stations suggesting that the United States' policy in Iraq was wrong. A defense attorney has interviewed Mahon, and the defense received, through an intermediary, a tape recording that Mahon had made to be given to our client. The intermediary felt that the delivery of such tape recording was improper and was concerned about its implications and forwarded it to the defense. The defense did not know whether the purpose of this tape recording was to encourage the Defendant to "sacrifice" himself for the eventual "justice" of the cause or was a subtle threat intended to remind the Defendant that members of his family were vulnerable.[10]

When the defense learned that Mahon and his brother had telephoned Germany with orders to kill Strassmeir, the FBI was immediately informed. Mahon's taped message goes on to say that Mr. McVeigh is "innocent by reasons of entrapment," but that notwithstanding being innocent, he should accept the sacrifice in order that justice may prevail. Mahon is a frequent participant in gun shows. Mahon has been banned from the United Kingdom and from Canada and was characterized as an international terrorist. A majority of German terrorists have been trained in Palestinian camps in Jordan, South Yemen, Syria, Iraq, and Lebanon. D.E. 2191 at 11.

Nebraskan Gary Lauck who was arrested by German authorities for smuggling terrorist manuals and Nazi propaganda to neo-Nazis in Germany, wrote a 20-page manifesto entitled, "Strategy, Propaganda and Organization." The paper describes the integration of worldwide extremist groups into a tight network and "military education with terrorist aims." Sources have informed counsel that Lauck had frequent contacts with Islamic terrorist groups. He was also an associate of Dennis Mahon.

In a book written by former German neo-Nazi Ingo Hasselback, which was excerpted in the January 8, 1996, edition of New Yorker, he recalls how Lauck offered connections to American neo-Nazi groups. He wrote, "Through him I later became a pen pal of Tom Metzger, the leader of WAR, the White Aryan Resistance, in southern California, as well as Dennis Mahon of the Ku Klux Klan."

After Lauck's arrest by German authorities, German and American neo-Nazi groups found new ways to smuggle material into Germany using Sweden. Dennis Mahon helped to establish a chapter of his "White Aryan Resistance" group in Stockholm, Sweden. The German BKA has confirmed to German ARD television that this pipeline exists. Before Lauck's arrest, in March 1995, Denmark had been used as the smuggling point.

Mahon confirmed to ARF television that he brought German neo-Nazis to this country for training. The interview was videotaped. In the days immediately preceding April 19, 1995, when Elohim City was preparing for the execution and funeral of Richard Snell, members of that community placed numerous telephone calls to Mr. Snell's family, the Arkansas Bureau of Prisons, the local undertakers, and a series of phone calls were interspersed to Dennis Mahon's residence.

The defense has also acquired information from unimpeachable sources that Dennis Mahon made statements to the effect of, "If a person wanted to know about the bombing, then they should talk with Andy Strassmeir because he knows everything." These same sources inform the defense that Mahon admitted to him that he met James Nichols, the brother of Defendant Terry Nichols, in Michigan. Bob Miles' (a Michigan leader in the White Supremacist movement, now deceased) farm was only 62 miles from James Nichols' farm.

2. Andreas Strassmeir.

Andreas Strassmeir is a German national whose father is a well regarded and successful politician in the Christian Democrat Coalition who recently retired as Secretary of State for West Germany, but whose grandfather was a founding member of the German Nazi party. D.E. 3123 at 14. Strassmeir was in this country illegally on an expired visa on April 19, 1995. Id. (Exhibits "F" and "H"). Subsequently, when Strassmeir became the subject of intense media and defense scrutiny, his attorney, Kirk Lyons, a well-known North Carolina lawyer whose principal clients are members of the most violent and extreme wing of American politics, openly boasted that he had "spirited" Strassmeir out of the country through Texas, Mexico and France, telling his supporters that it would be "easier to defend Strassmeir from Germany than from inside a federal detention facility." Id. at 14 (Exhibit "H").

Strassmeir, who was originally presented to the press as a starry-eyed German interested in American military history has now been identified as the Chief of Security at Elohim City, an active participant in a Klan rally in Texas, and having overstayed his visa in this country, having traveled on false identity papers (he was arrested in Oklahoma by State Highway Patrolman Vernon Phillips using the identity of Peter Ward) and a suspect in multiple investigations concerning weapons violations, including making weapons fully automatic. Id.

When Strassmeir, who is trained in terrorist tactics, was arrested on February 28, 1992, near Elohim City, he was not only carrying false identity papers, but also statements from foreign bank accounts, and a copy of The Terrorist Handbook. D.E. 2191 at 12. The Terrorist Handbook states that its purpose is "to show the many techniques and methods used by those people in this and other countries who employ terror as a means to political and social goals.... [A]ny lunatic or social deviant could obtain this information, and use it against anyone.... [The publisher] feels that it is important that everyone has some idea of just how easy it is for a terrorist to perform acts of terror; that is the reason for the existence of this publication." The table of contents includes chapters on low-order explosives; high-order explosives, including

how to build bombs from fertilizer and fuel oil; ignition devices; advanced uses for explosives; delay devices and explosive containers, including plastic containers.

According to a May 19, 1995, newspaper article "witnesses allegedly identified him [Strassmeir] at the end of April [1995] as one of the number of men seen in Junction City, Kansas, when McVeigh was also there during the days leading up to the bombing." D.E. 2191 at 12. One of the witnesses said she contacted the FBI as soon as she was shown a photograph of Strassmeir by a U.S. news organization investigating the Oklahoma affair.

Ambrose Evans-Pritchard, the author of this article, and Andrew Gimson, a reporter in the Telegraph's Berlin bureau interviewed Strassmeir a total of five times. Over the course of these interviews, Strassmeir revealed the following:

- A. Strassmeir was a former Lieutenant in Germany's elite Panzer Grenadiers, similar to our Special Forces, and was trained in military intelligence.
- B. He first moved to the United States in 1989 "because he was planning to work on a special assignment for the U.S. Justice Department." According to Strassmeir, "It never worked out."
- C. A retired USAF Colonel, Vince Petruskie was helping Strassmeir at the DEA and Treasury Department, but ultimately nothing came through. Interviews with Petruskie by defense investigators confirm this.
- D. Having failed to find a job in Washington, Strassmeir went to Texas where he found work at a computer company, and where ". . . he seemingly drifted into the subculture of the Klu [sic] Klux Klan, the Aryan Nations, and the extreme fringes of the Christian right.... He established himself as Chief of Security (at Elohim City) in weapon training, he said."
- E. Strassmeir "also claimed that he copper bottomed information about the bombing but seemed torn over how much he felt able to impart" to the Telegraph.
- F. Strassmeir said, "The ATF had an informant inside this operation. They had advanced warning and they bungled it." "What they should have done is made an arrest while the bomb was still being made instead of waiting until the moment for a publicity stunt."

Counsel for Defendant McVeigh personally interviewed Ambrose Evans-Pritchard in Washington, D.C., and confirmed each of these points. Mr. Evans-Pritchard represented to counsel that Strassmeir strongly suggested to him that there was an informant at Elohim City and that he was the informant. However, Strassmeir would not expressly admit to it. The government has denied Andreas Strassmeir was an informant employed by the United States. Mr. Evans-Pritchard informed the undersigned counsel that as part of his investigation into Strassmeir's background, Evans-Pritchard interviewed a member of the Texas Light Infantry during the time Strassmeir was in Texas.

Certain members of the Texas Light Infantry began to believe that Strassmeir was an ATF informant. Members of the infantry placed a "tail" on Strassmeir and followed him one night. Strassmeir went into a federal building in which was housed a local ATF office. On the doors of this particular federal building, there were combination locks and in order to gain entrance, the person had to punch in the correct combination. Evans-Pritchard reported to counsel that the members of the Texas Light Infantry reported that they watched while Strassmeir punched in the proper code, unlocked the door and went into the building. D.E. 2191 at 14.

Counsel has been informed by a reliable source that FBI Director Louis Freeh had invited a subject to accompany him on a trip to Italy and Germany in late 1993, shortly after Mr. Freeh became director of the FBI. The subject did in fact accompany Mr. Freeh first to Italy and then to Germany. Counsel was told that Mr. Freeh specifically invited the subject to be present when Freeh met with German internal security officials and that he agreed on the condition that he would not write anything about what he heard.

The subject was present in the meeting in Germany in November 1993 (he thought it could have been October, but was more positive about November), and that the German security officials specifically mentioned Andreas Strassmeir and said that he was "nation hopping" back and forth between the United States and Germany and that he had been associated with neo-Nazis in the United States and that they were very concerned about their activities. Director Freeh replied that the FBI was aware of Strassmeir, and was "monitoring" his activities, but that "because of the First Amendment, there isn't anything we can do."

When Strassmeir's potential link to this case was discovered, a reporter interviewed Dennis Mahon about Mahon's friendship with Strassmeir. When questioned whether or not Strassmeir could be an informant, Mahon became visibly upset. As information was traded, Mahon became more convinced that Strassmeir had been providing intelligence on them. Mahon immediately got in touch with a "A very important man in Germany and requested that he determine if Strassmeir could be an agent for the German government. The reporter heard them state to this individual that if Strassmeir had double-crossed them, "[Matron] wanted Andreas shot in both kneecaps and a confession elicited from him, then hold a 30-minute trial and then execute him." D.E. 2191 at 16. The FBI was immediately informed of the information when defense counsel learned it.

Despite government denials to the Court that Strassmeir has never been the subject of the investigation of this case, defense counsel has obtained documents--generated by the government--which indicate that he most assuredly was. One official document, dated January 11, 1996, from an investigative assistant discussed Strassmeir and stated, "Subject is wanted for questioning by FBI, Oklahoma City. Detain and notify [the FBI]," and then giving the phone number, and "refer to FBI case number," and then giving the Oklahoma City bombing case, and then concluding that "subject is possibly armed and may be dangerous." D.E. 3410 (Pretrial Hearing--Sealed--Not Provided to Defendant Nichols, March 10, 1997 at 18).

This document was generated months after the defense began requesting information concerning Strassmeir and during the very time that the defense was meeting with the District Court concerning Strassmeir. Id. In addition, the defense has now learned, belatedly through discovery and through Howe herself, that ATF informant Carol Howe was sent back to Elohim City after the bombing in an attempt to learn additional information about Strassmeir, Mahon and others. Also, through discovery, the defense has learned of significant official communication between the United States government and its representatives in Germany concerning additional information on Strassmeir and that Strassmeir has been the subject of interest to the Counterterrorism Division of the Diplomatic Protective Service of the Department of State in a document which we can only describe as specifically bearing the Oklahoma City bombing investigation case number and photographs of Strassmeir. See attached Exhibit "A" and "B" (Under Seal).

To say, in light of these documents and others filed under seal and not otherwise identified in this public filing, that Mr. Strassmeir was "never the subject of the investigation" is simply untrue. Strassmeir remained a suspect and subject of the Oklahoma City investigation as demonstrated by the fact that

1. Carol Howe was sent back to Elohim City where Strassmeir lives,
2. cable traffic between an agency of the federal government and its representatives in Germany clearly identify official interest in Strassmeir,
3. his picture and other information was circulated by the Department of State with respect to the Oklahoma City bombing, and
4. in January 1996, he was considered to be "armed and dangerous" and was to be detained for investigation and interview by the FBI.

For the government to represent to the Court, as it did that Strassmeir had never been the subject of the investigation is not consistent with the known facts and misleads both the Court and the Defendant. See (Scheduling and Rule 17.1 Conference--Sealed, January 29, 1997, at 60, 68). Strassmeir not only was a subject of the investigation and a suspect of official interest on two continents, but that interest lasted at least from the middle of April 1995 to January 1996.

[CONTINUED IN PART TEN]

FOOTNOTES:

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[10] The defense has no information that Mr. McVeigh was ever present at Elohim City or ever met Dennis Mahon.

PART TEN OF EIGHTEEN:

3. Carol Howe and the Bureau of Alchohol [sic], Tobacco and Firearms.

The defense investigation has accumulated a significant amount of information aside from discovery which indicates that ATF informant Carol Howe informed her agency handlers, the Bureau of Alcohol, Tobacco, and Firearms, prior to April 19, 1995, that various residents of Elohim City were planning an attack on Federal Buildings which included the Alfred P. Murrah Federal Building in Oklahoma City. The defense believes that the government received this information, and in fact followed up on it, in the early morning hours of April 19, 1995. D.E. 3313 at 1.

Previous representations to the Court by government counsel that Mr. Strassmeir "was never a subject of the investigation"[11] are inaccurate and misleading at worse and economical with the truth at best as outlined above. The government in fact conducted an investigation of Mr. Strassmeir and Mr. Mahon in the days immediately following the Oklahoma City bombing, and then failed to follow through on the investigation, not because it was unproductive, but because to pursue the investigation would in effect lead back to the government's knowledge of prior warning. Defense counsel is of the opinion that the government has engaged in a willful and knowing coverup of information supplied to it by its informant.

As a threshold matter, counsel for Mr. McVeigh have requested, in writing, that the government provide information concerning Dennis Mahon and Andreas Strassmeir since February 15, 1996. See D.E. 1923 Exhibit "N" (letter to Beth Wilkinson requesting specific information concerning various individuals, but specifically naming Dennis Mahon and Andreas Strassmeir). On March 8, 1996, Mr. McVeigh filed a discovery motion, seeking specifically intelligence information from the federal government and specifically mentioning Dennis Mahon and Andreas Strassmeir. See D.E. 1079 at 7 18, 19. Dissatisfied with the government's responses, counsel filed a Motion to Compel Production of Discovery Material on August 27, 1996, again, specifically referencing Dennis Mahon and Andreas Strassmeir. See D.E. 1921 Exhibit "C."

On October 10, 1996, counsel for Mr. McVeigh amended the Motion to Compel Production of Discovery Material, reiterating specific requests for information concerning Dennis Mahon and Andreas Strassmeir. See D.E. 2265 at 34. Most recently, counsel addressed outstanding discovery requests in a Supplemental Motion to Compel the Production of Discovery Information, reiterating the previous specific requests for information concerning Dennis Mahon and Andreas Strassmeir. See D.E. 2768 at 6-7.

In a nearly one-foot-thick pleading filed October 18, 1996, the government responded to McVeigh's Motion to Compel the Production of Classified Information, specifically including information the government possessed concerning Dennis Mahon and Andreas Strassmeir. See D.E. 2331. Absent from that pleading, and also from the information responsive to defense requests for information concerning Dennis Mahon and Andreas Strassmeir, was Insert No. E-427, a report of interview by the AFT, which concerned a confidential ATF source named "Carol." See D.E. 3313 (Exhibit "D").

Counsel for Mr. McVeigh has now learned that "Carol" is actually Carol Howe, an ATF informant at Elohim City, who had an intimate relationship with Dennis Mahon, who knew Andreas Strassmeir, and whom ATF Agent Angela Finley interviewed on April 21, 1995--two days after the bombing. This particular Insert was brought to our attention by government counsel during the in-chambers conference of January 29, 1997. See Reporter's Transcription (Scheduling and Rule 17.1 Conference-Sealed) at 65, no docket number assigned [hereinafter "Tr. _"]). Government counsel indicated to the district court that this Insert had been disclosed

to the defense on January 23, 1996, but candidly admitted that the government did not list this Insert in its prior submissions to the district court because the government could not find it through a computer search. Id. at 66.

The Defendant does not credit this explanation, coming as it does after so many false, misleading representations from a former intelligence officer now on the prosecution team. The defense was unable to locate this "non-pertinent" Insert using a computer because all major search terms contained in the Insert were misspelled. Elohim City was misspelled or misidentified, as was Mahon, Strassmeir, the Rev. Robert Millar, and, in addition, Carol Howe was not identified in the Insert at all. Agent Finley's source was identified as a "confidential source" named "Carol"--no last name given. Thus, it is not even clear from the Insert that "Carol" was the confidential source's real name.[12] Elohim City was spelled "Elohm [sic] City," Dennis Mahon was spelled "Dennis Mehaun," Reverend Robert Millar was spelled "Bob Lamar'" and Andy Strassmeir was spelled "Andy Strasmeyer."

According to government counsel and interviews with other parties, Carol Howe contacted Agent Finley, her ATF "handler" (see Tr. at 67) and informed the ATF that she had been at the Elohim City compound and may have seen "Unsub 1" and "Unsub 2". D.E. 3123 (Exhibit "A" at 1). Carol Howe informed Agent Finley on April 21, 1995, that she learned about Elohim City when she called a racist hotline in May, 1994 and met the hotline operator/owner Dennis Mahon who would visit Elohim City to engage in paramilitary training. She also told Agent Finley that the security officer at Elohim City was Andy Strassmeir, whom she described as an illegal alien from Germany and a former West German infantry officer. Id.

Although Strassmeir has a German accent, he speaks English fluently, and according to Ms. Howe, Strassmeir talked frequently about direct action against the U.S. government, he trained in weaponry, and he discussed assassinations, bombings and mass shootings. She also described the residents at Elohim City as ultra-militant white separatists where required reading includes Mien Kampf and The Turner Diaries. Mahon discussed with Carol Howe "targeting federal installations for destruction through bombings, such as the IRS Building, the Tulsa Federal Building, and the Oklahoma City Federal Building." Id. (Exhibit "A" at 2).

In fact, Mahon not only discussed the destruction of the federal building in Oklahoma City by bombing, according to Ms. Howe, Mahon and Strassmeir took at least three trips to Oklahoma City in November and December 1994 and again in February, 1995--and Carol Howe accompanied them during the December 1994 trip. She has repeated these facts to several reporters. Ms. Howe reported all of this information to the FBI[13] the day after the bombing, and yet government counsel still insists that Andy Strassmeir was "never a subject of the investigation" (see Tr. at 68), but curiously does not make the same statement concerning Dennis Mahon.

But the one thing that is clear is that Carol Howe was an ATF informant feeding the ATF information concerning Elohim City, Dennis Mahon and Andreas Strassmeir both before and after the bombing of the Murrah Building. Ms. Howe was the one-time girlfriend of a person named James Viefhaus. Viefhaus has been indicted by a Federal Grand Jury in Tulsa, Oklahoma for threatening to destroy buildings by means of an explosive in 15 cities across the United States, as well as knowingly possessing an unregistered destructive device. D.E. 3123 (Exhibit "B"). The Viefhaus case has received considerable media coverage in the Tulsa area. Id. (Exhibit "C").

Viefhaus was arrested December 13, 1996, after federal authorities connected him to a recorded message, traced to his residence in Tulsa, which reportedly stated that the bombing of 15 U.S. cities would begin December 15, 1996, unless action was taken against the federal government by "white warriors" before that date. U.S. Magistrate Frank H. McCarthy "expressed concern" about investigative reports that Viefhaus has compiled lists of buildings

to be bombed and that Viefhaus possessed pictures of at least two buildings in Tulsa that house federal employees. Id.

FBI agents claimed that they found ammonium nitrate and other chemicals that could be used in bombing-making in Viefhaus' home and that the search of Viefhaus' home including written instructions for bomb-making and references to the lengths of pipes, caps, screws and fuses, as well as black powder, accellerants, and various loaded firearms. Id. (Exhibit "C" at 3). In addition to this information, the search of his house also uncovered a how-to book about constructing homemade weapons as well as a photograph of Viefhaus and his "housemate" holding weapons and wearing swastikas on their clothing. The message that the federal agents have connected to Viefhaus is believed to be affiliated with the National Socialist Alliance of Oklahoma, and the speaker on the tape had reportedly endorsed the bombing of the Murrah building in Oklahoma City.

Carol Howe is the person described as Viefhaus' "housemate" and is the person in the picture with Viefhaus where the both of them are wearing swastikas on their clothing. For his part, Mahon has stated to the press that he does not believe that Howe and Viefhaus are guilty of anything, that he knows these two persons, and "they gave me their word that they were above ground and totally legal. They stand up for White Aryan beliefs." Id. (Exhibit "C" at 9).

Mahon does indeed know both of these persons. Carol Howe had actually filed a petition in open court in Tulsa, Oklahoma, for a protective order against Dennis Mahon on August 23, 1994.[14] Id. (Exhibit "D"). The basis for the protective order was threatening phone calls in which Mahon told Howe that he would "take steps to neutralize" her because he perceived that she had turned on the movement, meaning the agenda of the White Aryan Resistance of which Mahon is in charge in Oklahoma.

Counsel for Mr. McVeigh has contacted counsel for Mr. Viefhaus, Craig Bryant, Assistant Federal Public Defender for the Northern and Eastern Districts of Oklahoma, and Mr. Bryant has in turn spoken with Ms. Howe at the federal courthouse in Tulsa. According to Mr. Bryant, Ms. Howe is the girlfriend of James Viefhaus, and asked to speak with Mr. Bryant because of his concern over the fact that she had not been indicted by the grand jury, but James Viefhaus, her boyfriend, had been indicted. Mr. Bryant stated that the prosecutor in the case, Ken Snoke, stated in open court that shortly after James Viefhaus' arrest, the government felt Ms. Howe was equally culpable--yet she was not indicted. Id. (Exhibit "E").

Ms. Howe told Mr. Bryant that the reason she was not indicted because she served as a confidential informant for the ATF for several months in 1995, and that the information she provided to the ATF concerned an investigation of Dennis Mahon. Ms. Howe believes that the reason she was not indicted along with her boyfriend was that the government does not want her prior work as a confidential informant for the ATF to become public knowledge.

Carol Howe was subsequently indicted on March 11, 1997, in a superseding Indictment in the United States District Court for the Northern District of Oklahoma, No. 97-CR-05-C. The defense believes that an Indictment was obtained against Carol Howe for the purposes of "leverage" against her in order to keep her mouth shut about what she knows about the activities of Mahon and Strassmeir. The information she possesses suggests strongly that the ATF, the most hapless and beleaguered of the federal law enforcement agencies, may have had notice that militant right wing radicals had targeted the Alfred P. Murrah building for destruction and botched the interception of the plan in their finest Waco tradition. The institutional repercussions for ATF if Carol Howe is telling the truth could be the death knell of that organization. Information corroborative of Carol Howe will be provided, if at all, only through the most coercive judicial means.

When counsel filed a Motion to Compel Production of a variety of tangible objects relating to statements made by Carol Howe, an ATF informant, concerning the possibility of a prior warning being given to the government of a possible terrorist attack on federal buildings in Oklahoma, including the Alfred P. Murrah Federal Building (D.E. 3123), government counsel asked defense counsel to hold the matter in abeyance pending review of documents that would be submitted to defense counsel concerning Carol Howe, and the district court then asked that counsel advise the court whether production was sufficient or the motion was moot. Counsel thereafter advised the district court that the issue was not moot and that the order to produce should issue. D.E. 3313 at 2.

Information furnished to counsel by the government on Thursday, February 6, 1997, concerning the Carol Howe matter raises grave questions concerning the credibility of representations made to the District Court, repeatedly, and made to the public and survivors and next of kin of the victims of the Alfred P. Murrah Federal Building explosion as to whether the government had prior knowledge that the Murrah Building might be attacked.[15]

Although it might appear at first glance that this issue would not directly be related to the issue of Mr. McVeigh's guilt, in fact, it is very much an issue for the Court to consider. To begin with, it has consistently been the government's belief and argument that two, and only two, individuals were the "masterminds" (to use the prosecution's statement of April 9, 1996, (D.E. 3313 at 6) at page 56) for the Oklahoma City bombing. Carol Howe's statement indicates that there are other "masterminds" including at a minimum Andreas Strassmeir, or Dennis Mahon, and quite possibly Reverend Robert Millar. In addition, aside from impacting upon Mr. McVeigh's guilt as a "lesser participant" in Count One, it might be a direct defense for Counts Two through Eleven, especially when the government does not have a single eyewitness to place Mr. McVeigh in Oklahoma City that it is willing to sponsor at trial. Finally, the issue of government prior knowledge is directly related to the appropriateness of punishment and is a strong mitigating factor should Mr. McVeigh be convicted of one or more of the substantive counts.

Repeatedly, the government has denied that it had any prior knowledge of a suspected bombing attack on the Murrah Building on April 19, 1995. The government has not qualified these denials by saying it had no credible information. In this connection, the government's representations to the district court are not dissimilar from the ones government counsel made which have subsequently been amended. Government counsel advised the district court at the April 9, 1996, session that the government had "no information" of any possible foreign involvement when in fact the government did have precisely such "information." Subsequently, this statement was amended to mean "no credible information." D.E. 2330 at 6. The government has simply denied, through the prosecution, the existence of any such information of a prior warning.

In a public pleading filed on November 7, 1996 (D.E. 2475), the prosecution, acting on behalf of the government, referred to the Defendant's request for such information of a prior warning as "outrageous." (D.E. 2475 at 6). Indeed, in the same pleading, the government went so far as to claim that ATF agents had been injured in the explosion and that one of them had actually suffered a free fall in an elevator in the Murrah Building. These statements were made on the public record and highlighted considerably in the press. In fact, the representation was false and untrue. Information furnished to the defense by the prosecution from the government long before November 7, 1996, indicates that the government's own investigation and interviews with the elevator engineer show that the elevator simply did not fall.

>From information furnished to the defense from its own investigation, from national reporters for ABC and NBC television news, from Time magazine, and from certain material furnished by the government, it is clear that the ATF had an informant, Carol Howe, the daughter of a very prominent and successful Tulsa, Oklahoma, couple who for a period of

time possessed beliefs in racial superiority of Caucasians. This belief was apparently initially formed as a result of a confrontation Ms. Howe had as a young woman with several young black males which required her, for her safety, to jump off the roof of a building and resulted in fractures or bone breaks in her ankles or legs. D.E. 3313 at 5.

After this incident Ms. Howe gravitated toward the Aryan Nation movement and became a close personal associate of Dennis Mahon, the former Imperial Wizard of the Ku Klux Klan, an individual who has received money since 1990 from Iraq, who has traveled to Germany to recruit for the Ku Klux Klan, who has been barred from the United Kingdom and Canada as an "international terrorist" (according to Mr. Mahon's own statement), and who has made a number of statements of the most extreme political nature about the necessity and desirability of overthrowing the government of the United States "by any means." D.E. 3313 at 5. In addition, Mr. Mahon is a former leader in the White Aryan Resistance, sometimes identified as No. 3 in its leadership, and apparently was a member of the Order.

Although it was not quite clear to counsel when Ms. Howe became an informant for the ATF, she has indicated that her relationship with Mr. Mahon became troublesome, she sought a protective order against him (D.E. 3313 (Exhibit "B"), and may have at the same time been recruited as an informant by the ATF and paid approximately $120 a week. The government has since verified that Ms. Howe became a registered informant for the Bureau of Alcohol, Tobacco and Firearms (ATF) in August, 1994, and continued her work on a regular basis until she was, according to the government, terminated on March 27, 1995. D.E. 3360 at 34. At that time, the ATF agent requested she be terminated as an informant because it was concerned about her state of emotional distress and her "loyalty" to the ATF. But even this representation by government counsel was simply not true.

Government counsel admitted on March 10, 1997--after stating on January 9, 1997, that Carol Howe had ceased being an informant in March 1995--that Ms. Howe, although removed as an ATF informant on March 27, contacted the ATF on April 20, 1995, concerning her knowledge of the Oklahoma City bombing, ATF requested permission to reactivate her as an informant, and she was sent back to Elohim City to follow up the information she provided. D.E. 3410 (Pretrial Hearing--Sealed--Not Provided to Defendant Nichols at 32). (Information here only summarized--please see full sealed transcript).

On the morning of February 13, 1997, defense counsel was informed that the FBI would deliver to his office, shortly after 1:30 that day, reports on Ms. Howe's activities prepared by Agent Angela Finley. At approximately 1:30 p.m., two agents arrived and appeared with what were represented to be summary reports of Ms. Howe's activities for the ATF prepared by Agent Finley, her case handler. Accompanying the file was a letter from government counsel with one attachment which counsel was permitted to keep. A copy of the letter from government counsel and the attachment are found at D.E. 3313 (Exhibit "C").

This delivery to counsel's office followed a 7:30 a.m. telephone call to counsel that morning by one of the prosecutors who advised counsel that the government had learned that Carol Howe was going to conduct a press conference in Denver that afternoon. Counsel for Mr. McVeigh had no such information and expressed to the prosecutor that he did not believe that such a press conference was in the works because Ms. Howe was in Austin, Texas, and her attorney, Mr. Smallwood, was in a first degree murder trial in Tulsa, Oklahoma.

The undersigned counsel read the reports which were prepared and signed by Angela Finley, and on some occasions by others in the ATF Office in Tulsa. Incidently [sic], counsel noted that Ms. Finley had absolutely no difficulty spelling correctly the proper nouns which constitute the names Dennis Mahon, Andreas Strassmeir, Elohim City or Reverend Robert Millar, all of which, were misspelled in the report provided to counsel. D.E. 3313 (Exhibit "D").

This report reflects the interview that Ms. Finley and FBI Special Agent James R. Blanchard, II, had with Carol Howe on April 21, 1995. While it may be claimed that Mr. Blanchard was "inexperienced" and Ms. Finley did not actually see the finished memorandum, such statement or claim, if made, credulity lacks. Ms. Finley was one of the two interviewing agents, and undoubtedly was furnished a draft of the memorandum of interview and could easily have corrected it. We believe that this information was deliberately misspelled in order to disguise or hide it from a computer search by the defense counsel. In fact, according to the representations of government counsel to the district court on January 29, 1997 (Tr. at 66), the prosecutors themselves could not find the information because of the misspelling.

We do not credit these explanations. We note that when the district court directed the government to respond to our request for information on Mr. Strassmeir and Mr. Mahon, the government filed numerous 302's and other material, but the Insert prepared by Blanchard-Finley (which arguably constitutes the most significant information concerning Strassmeir and Mahon) was not included in the material filed under seal with the district court on October 18, 1996. See D.E. 2332. Considering the fact that the identity of Strassmeir and Mahon and the Defendant's suspicions of them have been the subject of numerous filings in this case, the failure of every government prosecutor and every case agent who worked on this file to remember the April 21 interview simply is not credible, but if it is credible, it once again suggests that the Defendant is being penalized either because of the government's willful or negligent withholding of information. If government prosecutors knew of the April 21 memo and failed to disclose it, after being directed to by the district court, the withholding of it was willful. If, after the district court specifically ordered a full response, and the government could not find it, then it was negligent in not knowing its own material which concerns a subject not of a casual interest, but of direct relationship to the case and the defense Brady request.

The reports which counsel read are not the reports of Carol Howe, but purport to represent monthly summaries prepared by Agent Finley of some of the work of Carol Howe and some of the things that she reported. The last report is February 1995, but there is no December 1994 report. Although these limited number of documents do not specifically reflect the precise information that Carol Howe furnished on April 21, they come very close to suggesting it. In her April 21, 1995, memorandum, Ms. Howe discussed Andreas Strassmeir, Dennis Mahon and Elohim City at some length and specifically mentioned that Dennis Mahon had talked to her about bombing either an IRS building, the Federal Building in Tulsa, or the "Federal Building" in Oklahoma City, presumably a reference to the Alfred P. Murrah Building, although it could arguably have included the old Post Office building and the United States Courthouse, both of which are in the "Federal Complex" in downtown Oklahoma City. All of the allegations she has repeated in subsequent interviews.

On the other hand, the Insert does not state that Ms. Howe did not furnish this information prior to April 19. The Insert purports to reflect what Ms. Howe was telling the FBI was her knowledge on April 21. Whether she told the FBI about her previous contacts with the ATF is not immediately clear from official documents, but presumably she did because she is identified as a "confidential informant" for the ATF. Of course, at that moment in the investigation, and with Ms. Finley present in the room, the FBI agent could have failed to ask the question about prior notice by Ms. Howe, or if he asked the question, simply not put down her answer on the self-justified ground that he was not investigating whether the ATF was negligent, but whether Strassmeir and Mahon had a role in the bombing.

However, in the reports which counsel read, Ms. Howe did tell the ATF, according to Finley's summary, that she had been in and out of Elohim City on a number of occasions, that Elohim City residents, including Mahon and Strassmeir, were apparently engaged in serious violations of federal weapons law, that there was a plan to place a bomb on the front door of a Tulsa

business by Mahon, and that Mahon himself, together with Strassmeir, had talked about making bombs and the necessity to take action against the federal government. According to these summary reports, Strassmeir specifically told Howe that he was interested in bombing or blowing up federal buildings, installations or property. Again we stress this information was given to the government prior to April 19, 1995, because it is in reports dated prior to that day. The accuracy of the information has been confirmed in whole or part from three media sources.

In addition, Howe has described the Reverend Millar as preaching continually the necessity of a "Holy War" against the federal government and Howe described that the residents at Elohim City were very familiar with what had happened at Waco, they admired David Koresh, and that copies of the Turner Diaries[16] were readily available. Summarized at D.E. 3313 at 10, but repeated in other interviews.

[CONTINUED IN PART ELEVEN]

FOOTNOTES:

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[11] See Scheduling and Rule 17.1 Conference--Sealed, January 29, 1997, at 60, 68.

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[12] Defense counsel is very suspicious of the multiple misspellings in this FBI Insert. The Insert was generated as a result of an interview of Carol Howe in Oklahoma City on April 21, 1995 conducted by Special Agent of the FBI, James R. Blanchard, II, and Agent of the ATF, Angela Finley. It is difficult to conceive how Agent Finley could participate in an interview which would lead to the drafting of a memorandum in which every material name (Matron, Strassmeir, Millar, and Elohim City) would be misspelled because, according to Ms. Howe, Agent Finley was her "case handler" and specifically knew that Howe's assignment was to infiltrate Elohim City and become acquainted with Strassmeir, Mahon, Millar and others. If the Insert was prepared without it being reviewed by the person who also participated in the interview, another law enforcement officer, the process was incredibly sloppy and unprofessional. If she did review the Insert, the more likely scenario, she would instantly have known that all of the names were misspelled. Defense counsel believes they purposefully were misspelled. It is difficult to imagine how a Special Agent of the FBI can misspell "Matron" and "Miller."

The fact that prosecutors themselves could not find the insert is not surprising. There may have been a deliberate effort to deceive them and keep from them information, which, in their professional responsibilities, they would know had been turned over to the defense. This was the danger of the so-called "open file" discovery. Everything was given to the defense, the government argued, so thus if anything turned up which embarrassed the government's case, it could always claim it had been "furnished" to the defense (as indeed government counsel often did), but if it is furnished amidst thousands and tens of thousands of sheets of paper so that it cannot even be pulled up on a computer search, then the production is meaningless.

The names of Strassmeir and Mahon are hardly strangers to the discovery disputes or to the government. Moreover, it emphasizes the need for court intervention because not even the prosecution can protect itself against efforts of either the FBI or the ATF to obscure and hide information by misidentification.

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[13] The Bureau of Alcohol, Tobacco, and Firearms was aware of this information prior to April 19, 1995. Carol Howe has flatly stated the information was provided to the ATF by her

and she is satisfied she gave them enough information to alert them to a possible threat. After her FBI interview on April 21, 1995, Howe was reemployed as an ATF informant and sent back to Elohim City.

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[14] The petition makes reference to the "White Aryan Resistance of which Dennis is the head in Oklahoma." See D.E. 3313 (Exhibit "B").

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[15] The government's denials are carefully circumscribed. In a November 7, 1996, filing (D.E. 2475), the government stated, "Stated simply, neither the BATF nor any other federal agency had any advance knowledge of the deadly bomb that McVeigh delivered to the Murrah Building .... Claims on this point, which he (McVeigh) highlights among 'the most important of all his claims (citation omitted) are unfounded because the prosecution is not withholding anything that even remotely would support such an outrageous charge'." (Emphasis supplied).

Notice how carefully this statement is worded. The government's denial is limited to advance knowledge of "the bomb that McVeigh delivered." The government does not disclaim knowledge of a prior warning from Carol Howe that the Murrah Building was one of three targets that a group of Aryan Nation White Supremacists, members of a terrorist organization at Elohim City, were planning to use in a first strike against the government because Elohim City feared that it would be the next "Waco" and should, in the words of Carol Howe, "strike first."

Moreover, the Court's attention is respectfully called to the fact that after stating the "government's" denial, the proper noun is then shifted so that it is "the prosecution" which is not withholding anything .... Whether the prosecution is withholding it or not is immaterial. What is clear is that the government is withholding it.

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[16] The government has repeatedly alleged that the Turner Diaries contained the blue print for the bombing of the Murrah Building.

PART ELEVEN OF EIGHTEEN:

In addition, Ms. Finley has described an underground bunker at Elohim City, a weapons storage unit and other places. She advised the ATF that Strassmeir was in the country illegally, that he thought it was time to take action, and that she and her ATF agent had purchased various inert grenades in an attempt to see if Dennis Mahon, Strassmeir, and although counsel does not remember specifically, it appears also that she referenced Peter Ward, Mike Brescia and others as people who would make the grenades "live." She described Strassmeir as chief of security and military training, and said that night-time military training exercises were held. She also described that there was an influx of people in and out of Elohim City from what might be described as other Fundamentalist Protestant denominations who mix a Fundamentalist belief of religion with hatred of the government. D.E. 3313 at 10-11.

All of the above Carol Howe stated before April 19, 1995. What she told the ATF concerning Andreas Strassmeir is consistent with Oklahoma State Highway Trooper Vern Phillips' arrest of Strassmeir carrying the false identity of Peter Ward with information on how to build terrorist explosives found in his automobile. This information was subsequently furnished to the defense in discovery, see D.E. 3313 at 11, but is also in Phillips' arrest report and confirmed in substantial part by the wrecker driver.

Counsel has had a number of telephone conversations with Ms. Howe's attorney, Allen Smallwood, a well regarded member of the Tulsa bar. Counsel had previously furnished Mr. Smallwood a copy of the Insert concerning his client while advising him of the existence of the protective order and asking him to comment on it. D.E. 3313 at 11.

Subsequently, counsel learned that before 20/20 ran its first program on January 17, 1997, concerning possible prior knowledge by the government, that members of the prosecution had telephoned ABC the Monday before the program was to air on Friday and had two conversations with him, one of which lasted an hour and the other which lasted approximately 47 minutes, and that a prosecution member thereafter called ABC on several occasions during the week in an attempt to persuade ABC not to air the program. Later, another government counsel also contacted ABC. A representative of ABC considered these efforts by the government to be news management and an attempt to censor a legitimate news story. ABC claimed that on the day the second program was to run on ABC Evening News to discuss Carol Howe, that the prosecutors again telephoned ABC in an attempt to persuade ABC not to run the program and that a senior public information officer from the ATF also telephoned ABC. D.E. 3313 at 12.

ABC representatives had a conversation with a government press spokesman ("press spokesman") of the Department of Justice, and the press spokesman confirmed for ABC that its information "is accurate." She stated to ABC that she did not believe the November/December confidential informant reports talked specifically about people blowing up buildings and she did indicate to ABC that there was a limit to what she could say because of discovery and ABC said that the press spokesman then said, "We have to admit now Strassmeir has been investigated." ABC stated that the representative said words to her to this effect: But you have denied over and over and over that he was ever the subject of an investigation. ABC said the press spokesman then said, words to this effect: "Well, we're undenying that now. He has been investigated, but we could not involve him specifically in the bombing of the building."

ABC then said the press spokesman said that in regard to Carol Howe, that she had heard other people, while an informant, talking about threats and those people "were investigated, but it was after the bombing" and she said, the government "could not find anyone who bought fertilizer, could not find anyone who rented a truck, so therefore we could not charge

them with anything." Then, according to ABC, the press spokesman said, "We're not sure that information was credible." ABC then said, but did you or did you not send her back out? The press spokesman said that information was correct, she was an informant sent back. ABC then said: "Well, what in the hell does that mean?" And the press spokesman said: She did go back out, but she was unable to develop any evidence that these people had participated. ABC said that the press spokesman then said, "Essentially your information is correct." But the press spokesman said there wasn't anything that specifically connected them to the bombing of the Murrah Building. D.E. 3313 at 13.

ABC also said that the press spokesman attempted to belittle the credibility of Carol Howe by stating that the government hears these types of statements all the time from "White Supremacist compounds." ABC then said to her: Yeah, but there's one difference here. The press spokesman asked what that was and the producer said, "The God damn building blew up, that's what." The press spokesman then said, "All right, but even if that's accurate, what's it all add up to?" The producer said, "168 dead people, that's what." The press spokesman then sought to terminate the conversation by saying she would give an "official response" the next day.

After the 20/20 piece on prior warning aired on January 17, 1997, a confidential source for the defense asked Ms. Howe, "Do you think you told them [federal law enforcement, ATF and FBI] enough before the bombing to have alerted them to have the bomb squads out and to have taken precautions?" She replied, "Yes." She also told ABC News that she had provided to the ATF a written report concerning her visit to Elohim City in May, 1995.

The defense has not received a copy of this report. The defense has also received information from unimpeachable sources that Ms. Howe made statements on December 24, 1996, which were tape recorded, concerning Strassmeir. When Ms. Howe was asked about Strassmeir she responded, he said he didn't want to settle down [and get married] with anyone because he wanted to go blow up federal buildings. That's exactly what he said." Ms. Howe also told the defense source that she had retrieved the notes she had used to brief her ATF handler, Angela Finley, about the detonator that Andy Strassmeir received from Sinn Fein, the Irish terrorist group.

The defense has also received information that ATF Agent Angela Finley may have instructed Ms. Howe to violate ATF regulations concerning agent dealings with confidential informants (CIs). According to defense sources who have interviewed Ms. Howe, Agent Finley told Ms. Howe not to report payments. This is a most serious violation of the absolute requirement that CIs be emphatically told that they must report all payments as income. Second, Agent Finley led Ms. Howe to believe that her debriefings were never recorded. ATF regulations require that all CI debriefings must be recorded and are very precise concerning the handling of the audio tapes of the debriefings. The defense believes that the more likely scenario is that Agent Finley was recording the debriefings and did not want Ms. Howe to know this.

In addition, counsel has also spoken with NBC News, which also interviewed Ms. Howe and who confirms that she told NBC and one other person the same information, that is, that she had informed the ATF prior to April 19, 1995, of the activities of Mr. Mahon and Mr. Strassmeir and Elohim City residents in

1. believing a Holy War was imminent,
2. that Elohim City should strike first,
3. that Elohim City was the next Waco,
4. that Strassmeir and Mahon wanted to bomb and blow up buildings, including Federal Buildings and installations, and
5. among these buildings was the Federal Building in Oklahoma City.

A report from Time magazine (D.E. 3313, Exhibit "A") indicates that Ms. Howe gave a tape-recorded statement to an individual in which she indicated that she had made a prior warning to the government concerning Mahon and Strassmeir and that Mahon had indicated he was considering three (3) targets, an IRS building, the Federal Building in Oklahoma City and the Federal Building in Tulsa. Time magazine then states:

> Sources in the federal government admit that Howe was a paid ATF informant in Elohim City from August 1994 until March 1995, but they say her 38 surreptitious tapes contain no evidence of a bombing conspiracy in the works. Only when she was debriefed two days after the bombing, government sources say, did she claim that Mahon and Strassmeir had discussed bombing government buildings. Agents familiar with the interview considered her answers speculative; in any case, she offered no additional details. D.E. 3313 at 14.

Among the persons assisting with the report in this article was Elaine Shannon, who is Time magazine's Department of Justice reporter. Counsel has long ago complained to the district court that the government's statements on material exculpatory information of other suspects and other leads is highly qualified. The government has told the district court that it had "no information" of a possible foreign involvement when it did. The government has told the district court that "Andreas Strassmeir was never the subject of the investigation," when he was.

There is no other way to describe the material found at D.E. 3313 (Exhibit "E") which consists of State Department papers and other material from the State Department, other than Andreas Strassmeir was a subject-suspect in the Oklahoma City bombing. What government prosecutors have done is used the narrow definition of "subject" contained in the Department of Justice Manual to mean that the Grand Jury took no action or no interest in Mr. Strassmeir. That is not the test of Brady. The district court undoubtedly understood her comments to mean that Strassmeir was never the subject of official interest by the government when he most assuredly was. Likewise, the government press spokesman's statements that they couldn't find that anybody at Elohim City had purchased fertilizer or that there wasn't any "specific" mention of the Alfred P. Murrah Building is unavailing. The government is hiding behind semantics such as "subject," "investigation," and "specifically." The truth is that Mahon and Strassmeir and others are part of what is described as a terrorist organization at Elohim City which believed that it would be the next Waco, and should engage in a Holy War and strike the government of the United States first.

A pristine example of government double-speak occurred very recently in a newspaper article published in the Daily Oklahoman in Oklahoma City. See attached Exhibit "C." The Oklahoman quoted Weldon Kennedy, the FBI's chief investigator on this case, as saying that he "doesn't believe" that there was a prior warning. He "doesn't believe" it happened. This is from the government's chief investigator. See attached Exhibit "C." The pattern is clear. The more the evidence slips through the cracks that the government may have had an indication that a tragedy like Oklahoma City might occur, the more the government relies upon specificity in defining the word "warning."

Soon the government's position will revert to the ridiculous and it will only deny any knowledge that the Murrah building was specifically targeted at 9:02 a.m. on April, 1995, to be destroyed by a bomb delviered [sic] in a Ryder rental truck by Timothy McVeigh. That is not the standard for discovery in federal courts; that is the federal government playing word games in order to avoid what is potentially the single most embarrassing and humiliating situation since the public found out that the FBI had an informant inside the terrorist group that bombed the World Trade Center in New York--an informant that actually helped make the bomb--but they bungled the entire situation and did not prevent that tragedy.

Carol Howe told the ATF that they certainly understood the significance of the date April 19 at Elohim City (if not for Waco, then the execution of Richard Snell). The government has been hiding behind verbal gymnastics and linguistic word games and failed to produce the information. The Time magazine article is an outstanding example. Again, it states, but they (sources in the federal government) say her 38 surreptitious tapes contain no evidence of a bombing conspiracy in the works." Of course, her 38 tapes may not, but counsel wants to read the raw reports, review the tapes himself, and the videos, and asks this court to order material that the ATF or FBI have concerning Elohim City, Andreas Strassmeir and Dennis Mahon to be produced forthwith.

The defense has made a sufficient showing that there is a high probability, certainly at least a high possibility, that Mahon and Strassmeir are part of a conspiracy that planned to bomb Federal Buildings, and may have in fact been part of the conspiracy to bomb the Murrah Building. We are not talking about proof beyond a reasonable doubt, or sufficient proof to indict. We are talking about the duty of the government to furnish information to the defense to support what is clearly its stated defense, i.e. that Mr. McVeigh is not guilty and that he is not a part of the conspiracy.

Andreas Strassmeir's roommate, Mike Brescia, and two other residents of Elohim City have now been indicted by a Federal Grand Jury for 22 midwestern bank robberies in which false FBI identification and threats of bombs were involved. These robberies, according to the Indictment, were to finance the Aryan Republican Army (which included as one of its members Dennis Mahon). This Grand Jury Indictment certainly indicates, for purposes of Brady discovery, that individuals residing at Elohim City at the same time as Mahon and Strassmeir were fully capable of carrying out terrorist acts.

They are members of a terrorist organization; they associate with known terrorists; at least one of them has been prohibited from entering a foreign country because he is a terrorist; they have told an ATF informant that they wish to blow up Federal Buildings; they had made no secret for the dislike of the government of the United States; they are members of a violent, right-wing, neo-Nazi, White Supremacist, Aryan Nation organization; and one of them is in the pay of Iraq. Evidence now exists that Mahon and Strassmeir may have engaged in federal weapons violations; may have planned a bombing attempt on the IRS building, the Federal Building in Tulsa, or the Federal Building in Oklahoma City prior to April 19, 1995; that Strassmeir and Mahon traveled together to Oklahoma City on several occasions prior to April 19; that they and other residents at Elohim City felt that Elohim City must strike first and wage a Holy War.

Our patience is exhausted. The time for wrangling is past. We are no longer convinced the documents drafted and furnished to us, after the fact, by bureaucracies whose very existence and credibility is challenged, can be relied upon. We ask for an order compelling production of all the raw notes and all the reports and materials requested, not some sanitized version that is presented to us in an attempt to persuade us to join with the government in disputing a story which increasingly appears to be absolutely truthful.

Not only this court, but especially the defense, are interested in candor from the prosecution. The defense cannot be required to accept a definition of words as interpreted by the prosecution when apparently it has the only copy of the dictionary. This is a solemn criminal case, not Alice in Wonderland where definitions mean only what "the Queen thinks" and what she thinks is not known to anyone else. When the district court is told that an individual was not the "subject of the investigation," the normal and widely understood meaning of that word is that he was not of investigative interest, there is nothing which connects him. It does not mean "nothing credible" or that no Grand Jury subpoena was served.

A report by an informant, even after the bombing, that Strassmeir and Mahon were considering bombing Federal Buildings, had discussed the subject, and that one of them had clearly mentioned the Alfred P. Murrah Building, that the two of them had made trips to Oklahoma City, that one of them was an alien who had overstayed his visa, that this informant regularly passed polygraph examinations, and was used by law enforcement to record telephone conversations after the bombing, that she was sent back to Elohim City after the bombing, coupled with a flurry of cables to our Embassy in Bonn concerning Andreas Strassmeir, certainly makes him a "subject of the investigation" and any reasonable person, congressional committee or appellate court would so understand.

Common sense dictates no other conclusion. The repeated practice of the government and prosecution in this case when the shoe gets binding is to make a partial disclosure, assure the district court it understands its Brady obligations, and hold its breath, hoping the court does not order further disclosure, or will rely on the prosecution's "good faith." We think on the eve of trial, that the district court has expressed its view of the prosecutors' duty clearly enough and that they have told the court that they understand it, but partial compliance, delayed disclosures, and discovery information which cannot reasonably be found because of egregious misspellings are inconsistent with that duty. The order to produce should issue and this foolishness should end.

Statements to the court by the prosecution that it cannot connect Strassmeir and Mahon to the bombing are hardly surprising. They did not try very hard to connect them because had they been connected, and Carol Howe's previous warning disclosed, the resulting furor would have been unimaginable.

[CONTINUED IN PART TWELVE]

VI. BEYOND ELOHIM CITY.

A. Suspect I. Posse Comitatus. and Iraq.

The defense believes that there is credible evidence that a conspiracy to bomb federal property, very possibly the Murrah Building, is centered in Elohim City and the persons described which are associated with Elohim City, but that the technical expertise and possibly financial support came from a foreign country, most likely Iraq, but possibly Iran or another state in the Middle East. Dennis Mahon has admitted publicly to received money from Iraq, approximately once a month. D.E. 2191 at 11. According to Mahon, the money started arriving in 1991 after he began holding rallies protesting the Persian Gulf War. Id.

Although the defense has no direct evidence linking Suspect I with Iraq, there is evidence indicating an indirect connection between Suspect I and Iraq through the militant Posse Comitatus group in Kansas. Suspect I made two telephone calls to members of Posse Comitatus in Kansas: David Oliphant and Buddy Snead (who also is married to a Filipina). Sources within the Central Intelligence Agency have informed a defense source that two members of the Posse Comitatus from Kansas traveled to New York City and made contact with an Iraqi diplomat either immediately before the Persian Gulf conflict with Iraq or immediately after. In addition, the defense has recent information that someone made a telephone call from Suspect II residence to a Member of the Order. D.E. 2482 at 22.

1. Posse Comitatus.

Posse Comitatus was originally formed by William Gale, who died in 1989 at the age of 71 after having been convicted and sentenced to serve one year for impersonating a federal law enforcement officer. D.E. 2482 at 22-23. Mr. Gale died before his incarceration, apparently of natural causes. Id. Gale, a retired Army colonel who led World War II guerrilla units in the Philippines for General MacArthur, founded Posse Comitatus in 1969 with Henry Beech. One of the principal leaders of Posse Comitatus is Jim Wickstrom. Gordon Kahl was an activist in the Posse Comitatus who killed two federal marshals in a shoot-out at his North Dakota farm and became a fugitive. Kahl and Wickstrom were close friends. Id.

Kenneth S. Stern, in his book, A Force Upon the Plains (Simon & Schuster, 1995), wrote this of the Posse Comitatus in Kansas:

> But the Posse did more than pass out literature. Like many of today's militia groups, it practiced for war. One of the leaders of the Christian Identity (Elohim City is a branch of Christian Identity), the Reverend William Potter Gale, joined with James Wickstrom, leader of the Posse, to co-sponsor a string of "counter insurgency seminars" in the early 1980s. In Kansas, the Attorney General's Office reported that people were trained as "killer teams and hand-to-hand combat techniques, the administration of poisons, night combat patrol and murder by ambush." At least one bomb making seminar was also held. (Page 52) (Emphasis added.)

William Gale also authored a handbook on Guerilla warfare tactics for the Posse Comitatus and stated that, "Yes, we are going to cleanse our land. We're going to do it with a sword. And we're going to do it with violence." James Corcoran, Bitter Harvest at 31 (Viking 1990). See D.E. 2482 at 23. Three members of the Posse Comitatus met with the Iraqi Ambassador and

one is a resident of Kansas, living at Pratt, within an hour to two hours' drive of Herington. James Wickstrom was in Kansas immediately before the bombing. Of the three Posse members that met with Ambassador Mohammed Mashat of Iraq, Ed Petruskie lives in Pratt, Kansas. Eugene Schroeder lives in Colorado and the address of Alvin Jenkins is not known to the defense.

B. Saudi Report Concerning Iraq.

An official in the Saudi Arabian Intelligence Service reported[17] on April 19, 1995, and possibly earlier, that Iraq had hired seven Pakistani mercenaries, all veterans of the Afghanistan War, to bomb targets in the United States, one of which was the Alfred P. Murrah Building. D.E. 2191 at 3 (Exhibit "A"). A former Chief of Counterterrorism Operations for the Central Intelligence Agency provided this information to the United States government and described his source as "responsible for developing intelligence to help prevent the Royal Family from becoming victims of a terrorist attack." Id.

Thus, this information is not only facially credible, it is highly credible. The Director of Saudi Arabian Intelligence is the King's own son. There is no reason for such a high ranking official in the Saudi Arabian intelligence community to pass on such information if it is not true (or if there no reasonable basis to believe it is not true). On the contrary, the information has a strong indicia of reliability because of the extreme embarrassment to Saudi Arabia if the information is in fact false or unverifiable. It should be noted as well that the information provided to the defense by the government indicates that there are possibly two sources of this information. The FBI reports describe the source of the information as a person who has provided accurate and reliable information in the past. The information is credible and needs more investigation.

The information in these reports is not only facially credible, it is specific. The Saudi Arabian official reported that the bombing of the Murrah Building was sponsored by the Iraqi Special Services, who "contracted" the mission to seven (7) former Afghani freedom fighters currently living in Pakistan. The official also advised that the identity of the true sponsor of the bombing was concealed from the Pakistanis and the Afghan mercenaries may not have knowledge of Iraqi involvement or sponsorship. This is not unusual. This is simply how things are done in the world of international terrorism, intelligence, and covert operations. Despite repeated requests, the defense has been provided the sum total of three pages of information concerning this aspect of the case. See D.E. 2191 Exhibit "A."

The defense requested assistance from the United States State Department, via letter to the Secretary of State, to assist in defense investigation and travel to Saudi Arabia. Saudi Arabia has very stringent entry requirements and the defense was unable to facilitate investigation there. The State Department declined politely to assist the defense's travel to Saudi Arabia and attempt to interview the Saudi Arabian official. However, the State Department sent a list of law firms practicing in Saudi Arabia to the defense; but of course the State Department had no difficulty in facilitating entry into Saudi Arabia of American FBI agents traveling there to investigate the death of Americans in Saudi Arabia.

C. FBI Special Agent Kevin Foust.

The report originally generated concerning the information provided by the Saudi Arabian official came from a telephone call from a retired CIA official to FBI Agent Kevin L. Foust on April 19, 1995--the very day of the bombing. D.E. 2482 at 13. Agent Foust is no stranger to tracking down and prosecuting international terrorists. In fact, according to information and press reports in the public domain, Agent Foust appears to be one of the FBI's leading investigators in charge of apprehending and prosecuting terrorists. See D.E. 2482 Exhibit "D" (New York Times, Monday, October 7, 1996.

The defense believes the ex-CIA official called Foust and the CIA because he did credit his informant and the informant's information, and that the government's claim that ex-CIA official believed his informant was "untrustworthy" is nothing more than ex-CIA official's efforts to protect his source. The ex-CIA official it must be remembered is a long time intelligence operative. Certainly, nothing in the documents furnished by the government report the ex-CIA official as describing a Saudi official in that country's intelligence services, charged with protecting the Saudi royal family, as "untrustworthy."

Agent Foust, along with Agent Robert F. Clifford, were instrumental in apprehending Omar Mohammed Ali Rezaq, a member of the notorious Abu Nidal terrorist group, who, along with two other terrorists, hijacked an Egyptian airliner in 1985. Separating the passengers by nationality, Rezaq pulled aside the Americans and the Israelis, summoned five to the aircraft's open front doorway and then fired point blank into the back of their heads. Although three persons survived this brutality, two women were killed, one an Israeli and one an American. D.E. 2482 at 14.

This incident involved Egypt Air Flight 648 on November 23, 1985, which was a Boeing 737 carrying 98 passengers and crew members. Rezaq and two other men seized the plane shortly after takeoff on a flight from Athens to Cairo. In an ensuing gun battle, an Egyptian Sky Marshal on the plane shot and killed the hijacking leader, and the pilot landed the plane in Malta. Eventually, Egyptian commandos set out an explosive charge under the airplane and rushed the plane. In the ensuing confrontation, the blast rocked the rear of the plane and a fireball blew forward through the cabin. Fifty-seven more passengers and one hijacker died in the raid from smoke inhalation, explosive wounds or gun shots. Rezaq was in fact shot in the chest as he fled the plane. D.E. 2482 at 14.

Rezaq was prosecuted in Malta which, in 1992, was considering whether to free him, possibly as early as 1996. It was then that Agent Foust was enlisted to build a case for prosecuting Rezaq in the United States. When the Maltese government released Rezaq, Agent Foust and others tracked him down through the Sudan, by way of Ghana Nigeria and Ethiopia finally catching up with him and apprehending him in Nigeria.[18]

Clearly, the information concerning the possibility that Iraq enlisted mercenaries to commit the bombing of the Murrah Building was relayed and generated by people who should know. The phone call originally came to the ex-CIA official, former Chief of Counterterrorism Operations for the Central Intelligence Agency, who then notified Agent Foust. These men are dearly familiar with such matters and their familiarity and background concerning international terrorism should give weight to the information contained in their reports and the fact that an official telephoned Foust and the CIA immediately after the receiving the phone call from Saudi Arabia is strong evidence he did not consider the Saudi General "untrustworthy".

2. State Sponsorship Precedent:

There is ample precedent supporting the assertion as alleged here that terrorists sponsored by foreign states recruit American citizens for the purpose of engaging in terrorists acts here in the United States. Such countries include Iran and Libya. Libyan efforts to recruit American citizens, particularly black Muslims, are documented in the Federal Reporter in United States v McAnderson, 914 F.2d 934 (7th Cir. 1990). The McAnderson case involved the prosecution and convictions of members of a Chicago street gang called the El Rukus, convicted for conspiracy to commit terrorist acts throughout the United States in exchange for payment from the Libyan government. Id. at 938. Upon hearing that Louis Farrakhan had received $5 million from the Libyan government, the leader of the El Rukns actively sought sponsorship from Libya in exchange for an in kind amount of money. Members of the El Rukns actually traveled to Libya to meet with military officials of the Libyan government. Id. at 939.

The El Rukns sought to impress the Libyans and to demonstrate the depth of their commitment by discussing specific terrorist acts, among them destroying a government building, planting a bomb, blowing up an airplane, and simply committing a wanton "killing here and a killing there" to get the Libyans' attention. Eventually, the leader of the El Rukns decided that the Libyans would only be impressed by the use of powerful explosives. Id. at 940. The El Rukns attempted to obtain hand-held rockets and rocket launchers, LAW rockets, meaning "Light Anti-Tank Weapon" but were ultimately intercepted by the FBI and prosecuted.

Similarly, Iran, a well-known sponsor of international terrorists, is believed to have recruited Americans to commit acts of terrorism here in the United States. ABC News' 20/20 program has investigated this aspect of Iranian support for terrorism here in the United States and in the first quarter of last year aired a report concerning David Belfield, a/k/a Daoud Salahuddin. See D.E. 2482 at 16. According to the ABC News story, Salahuddin was born in North Carolina, but grew up in Bayshore, Long Island. Although both of his parents were university graduates, Salahuddin believed that because of his father's race, African/American, his father could not find employment other than menial jobs, e.g., a security guard, bartender, bouncer, etc. Id. at 17.

Salahuddin began studies at Howard University in 1969 where he was attracted to the Islamic movement on campus. He adopted Islam as his faith and soon was leading student protests and looking for an alternative to the rules of white America. Tom Jarriel, the 20/20 correspondent reporting this story, stated that U.S. authorities now believed that other young American males have been recruited by the Iranians. The Iranians utilized colleges and prisons to recruit young black men, indoctrinated them into the Islamic faith, and convinced them that, if necessary, they must use any means necessary, including deadly force, for the sake of their religious or spiritual leader. Jarriel located Salahuddin through the National Security News Service in Washington, D.C., and also through a retired detective located in Washington, D.C. They eventually met Salahuddin in Istanbul, Turkey and Jarriel claimed that he was in possession of police intelligence reports indicating that Iran has recruited in the United States Americans for "home grown terrorism".

In 1980 while Americans were being held hostage in Iran, a former Iranian Embassy official was the leading political opponent of the Ayatollah Khomani in Washington, D.C. The official was popular politically and socially in the United States and was often seen on American television supporting the Washington agenda and advocating Khomani's overthrow. He was assassinated by Salahuddin in 1980 after Salahuddin paid off a postman with $500 to allow him to allow him to use a postal service jeep and gain access to the official's home. Under the guise of having a package that the official must sign for, Salahuddin shot the official three times in the chest. After the killing Salahuddin then fled to Iran, the country that had provided the money and the orders for the assassination, and thereafter traveled around the Middle East visiting various international hot spots and associating with other terrorists. Salahuddin assumed that the order to commit the assassination was issued by the Revolutionary Council in Iran.

These two examples are simply what counsel has been able to find in the public record. Counsel, of course, does not have access to intelligence information of this nature but believes that such recruitment by foreign states which sponsor terrorism is not unusual. That is the working defense hypothesis in this case. The Iranians seem to target young idealistic black males and indoctrinate them to the teaching of Islam in order to "turn" them against the U.S. government. These people are targeted because their ideological compass is preset against the federal government. The same can be said for neo-Nazis and/or white supremacists. Although the white supremacist community are diametrically opposed to that of black Muslims, it is a well known fact that both share a common hatred for the federal government.

In addition, the United States government has been aware for many years that intelligence agents of foreign nation-states operate in the United States in furtherance of foreign interests against United States citizens. These concerns were brought before Congress in a still classified top secret staff report prepared for the Senate Foreign Relations Subcommittee on International Operations. See D.E. 2482 (Exhibit "I"). Portions of this top secret report were made public by the press and published by the Washington Post in 1979. The report analyzes the thorny foreign relations problem concerning illegal actions on the part of foreign intelligence agents against citizens in the United States. The government seeks a balance between enforcing domestic laws, even against foreign intelligence agents, and foreign policy concerns and recriminations against U.S. intelligence agents in other countries.

Although the major story at this time this report was made public in 1979 involved the Iranian security organization SAVAK, whose agents had been trained in surveillance and other espionage techniques by the CIA, and SAVAK's plan in early 1977 to assassinate Nasser Afshar, an Iranian-born U.S. citizen who angered SAVAK by taking out ads in U.S. newspapers denouncing the Shah of Iran, other foreign powers operate in the United States as well. D.E. 2482 at 19. The subcommittee report, according to the Washington Post, examined cases of harassment and surveillance as well as suspected assassination plots against United States citizens by the intelligence agencies of Chile, Iran, the Philippines, the Republic of China (Taiwan), the former Soviet Union, and Yugoslavia. To choose just one example, the Iranian SAVAK, at the peak its influence under the Shah, had at least 13 full-time case officers running a network of informers and infiltration covering 30,000 Iranian students on United States college campuses. The head of the SAVAK agents in the United States operated under the cover of an attache at the Iranian Mission to the United Nations, with the FBI, CIA, and State Department fully aware of these activities. Thus, the presence of foreign intelligence operatives in the United States is a fact of international foreign policy and for such operatives to carry out the policies of their foreign sponsors is not unusual.

D. Israelis Present at the Bomb Site.

The defense has obtained a memorandum of an interview with a high ranking Israeli security figure. See D.E. 2482 (Exhibit "J"). This memorandum confirms the following:

1. The source, who aids the Prime Minister on matters of counterterrorism, confirmed that Israel gave a general warning to the United States shortly before the bombing.
2. The United States approached Israeli "for consultations" and advice concerning the bombing.
3. Although Israel suggested that the bombing was not "Islamically motivated", Israel conceded that the bombing could have been implemented "borrowed methods" or could have been inspired by Islamic actions.
4. Israel in fact sent two experts, accompanied by the security officer of the Israeli Embassy in Washington, D.C., to the bomb site.
5. Israeli authorities were clearly not pleased that information had leaked of Israeli experts involvement in evaluating the bomb site.
6. The source, since the bombing, met with his American counter-part, Phil Wilcox[19], on a regular basis to "compare notes."

It is clear in the defense's view that the Israeli government sent its experts to evaluate the bomb site with full knowledge of the United States government. It is also clear in the defense's view that the one page report submitted by the government is not the complete report of the two Israeli experts. Counsel sought and obtained permission from the District Court to travel to Israel to investigate the presence of Israeli officials at the bomb site. In order to avoid drawing attention to counsel's visit, counsel entered Israel by a tourist bus over the Allenby Bridge (the King Hussain Bridge) on the West Bank via Damascus and Amman and, once in Israel, contacted very senior Israeli political figures in the late Prime Minister Rabin's

government and others who confirmed the presence of Israeli bomb experts at the Oklahoma City bomb site. The defense has learned that two weeks after the bombing, two Israeli officials toured the bomb site in collaboration with the ATF. D.E. 2191 at 9. Their conclusion, as outlined in their report to the United States government, was that the Oklahoma City bomb bore the indisputable earmark of Middle Eastern terrorists.[20]

The two Israelis are Dorom Bergerbest-Eliom and Yakov (or Yaskov) Yerushalmi. Bergerbest-Eliom was, at the time, Chief of Security for the Israeli Embassy in Washington, D.C. Yerushalmi was a civil engineer whom has been described as a "consultant" to the Israeli government. The undersigned counsel has confirmed that these two individuals were in fact sent by Israel and did in fact tour the bomb site. The two Israelis prepared a report on their observations. Counsel for Defendant McVeigh has not obtained a copy of this report but is informed that the report suggests details of the explosive device and that the bombing is a quot;signature" of Middle Eastern terrorists.

[CONTINUED IN PART THIRTEEN]

FOOTNOTES:

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[17] Significant portions of this material are in the public record either through media account or court proceedings.

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[18] Agent Foust may also have been involved in the investigation of the Achille Lauro case. Agent Foust is apparently knowledgeable concerning the travel of terrorist Youssef Magied Molgi and has had contact with Italian authorities concerning the case. See D.E. 2482 (Exhibit "E").

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[19] Wilcox is the U.S. State Department's coordinator for terrorism.

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[20] The government failed to produce a copy of this report, or even acknowledge the presence of Israelis in Oklahoma City--despite defense requests for this information. See D.E. 2768 at 54; D.E. 1921 (Exhibit "C" at 16).

Instead, a Fort Worth television station interviewed Moshe Tal and he stated that he was personally acquainted with the two Israelis who toured the bomb site, that they had been in Oklahoma City and he had forwarded a draft of a report to Cristi O'Connor of Channel 11.

Not until this happened did the government furnish a copy of the report to the defense, even though the ATF had escorted the two men. The copy forwarded to the defense does not mention a Middle East connection to the bombing. The defense believes that the government has not forwarded a true copy of the entire report.

PART THIRTEEN OF EIGHTEEN:

E. A Subject of the Investigation in the Philippines.

A subject of the FBI and Grand Jury investigation ("Suspect I") has been linked personally by a Filipino terrorist to convicted international terrorists Ramzi Yousef[21] and Abdul Hakim Murad[22] as well as Philippine terrorist groups.

The defense has learned of evidence suggesting a direct, personal link between a suspect of the investigation and Ramzi Yousef, the "mastermind" of the World Trade Center bombing according to a New York federal grand jury indictment. D.E. 2482 at 1-2. The defense has recently learned, within the last week, that three FBI agents are in the Philippines and have contacted the Philippine National Police Intelligence. The FBI is investigating Yousef's activities in the Philippines, including reports of terrorist training in Batansas.

Defense counsel have interviewed in the Philippines a known terrorist in the custody of the Philippine government. The purpose of the inquiry was to determine his knowledge of foreign "mail-to-order bride" businesses[23] and any links between that group and criminal activity in the Philippines and/or terrorism.

During the course of this interview, (D.E. 2482, Exhibit "L"), the individual relayed the following:

- a. There were definite criminal connections to the mail-to-order bride business in the Philippines;
- b. He was able specifically to identify a photograph of an individual engaged in smuggling activities;
- c. He identified terrorist training as coming from the International Islamic Academy at Peshawar Pakistan which has been funded in the past by Saudi Arabia and other countries;
- d. Targets of the Academy are "rich nations in Europe and Asia and the U.S.";
- e. The contact between foreign terrorists and local Muslims was generally initiated when local Muslim students came to know students from other schools at various international academies;
- f. He stated that Ramzi Yousef is also known as Abdul Basit and he identified two other members of Ramzi Yousef's organization including Abdul Hakim Murad, a codefendant of Ramzi Yousef, who told a security officer at the detention center in New York that the Liberation Army was responsible for the bombing in Oklahoma City (see D.E. 2482 Exhibit "M");
- g. He specifically identified J.S., an individual that the defense has learned knew or knows a subject of the investigation and has visited in the subject's home in the Philippines. J.S. has been identified as an arms dealer for the Moro Liberation Front, a terrorist organization in the Philippines;
- h. He was specifically interrogated as to what other bombing incidents after New York were attributed to Muslim terrorists and he specifically cited the bombing in Oklahoma City and the Saudi Arabia bombings;
- I. He also told counsel he knows personally a subject of the investigation. He met the subject and J.L sometime in 1992 or 1993 at the vicinity of Del Monte labeling factory in Davao, Philippines. This was before the New York City bombing. He (identified in the report as "No. 3") said that the subject introduced himself as a "farmer." At that time, he said that his companions were Abdul Basit (Ramzi Yousef), Wali Khan and Abdul Hakim Murad. They all conferred with J.L and the subject." Yousef, Khan, and Murad were convicted on September 5, 1996, in New York of conspiracy to blow up 12 U.S. jetliners in a plot planned in the Philippines;

- j. Because the person interviewed (No. 3) identified himself as knowing that the subject of the investigation "introduced himself as a farmer," he was asked to reduce his statement to writing and he did so. A copy of the written statement is found at D.E. 2482 (Exhibit "N"). His written statement identified three subjects discussed at the meeting where Ramzi Yousef and the subject of the investigation among others were present. These subjects were 1) bombing activities; 2) providing firearms and ammunition; and 3) training in bomb making and handling;
- k. He was also asked about the statement of Abdul Hakim Murad that the Oklahoma bombing was the handy work of the Liberation Army. Mr. Murad was a codefendant to Ramzi Yousef in the Philippine airline bombing case in federal court in New York. (Ramzi Yousef was also charged by separate indictment as the leader of the attack on the World Trade Center bombing which involved a Ryder truck carrying a fertilizer bomb). Specifically, He was asked "What was the identification of Liberation Army referred to by Murad?" See D.E. 2482 (Exhibit "M"). He stated, according to the interview, "It was the Palestine Liberation Army and/or the Islamic Jihad which Murad was referring to. . . . This army is associated with Hamas and based in Lebanon, he added." Id.
- l. He also placed the meeting of the subject and J.L with Murad and Ramzi Yousef in Davao and noted, "It was also the place where Muslims were taught in bomb making." This statement tends to be corroborative of the truthfulness of the Filipino terrorist because the defense has interviewed two individuals who claimed that the subject asked them if they knew anyone who made bombs, and one individual confirmed to a friend of his that the subject had with him a book on making explosives. See D.E. 2482 (Exhibit "K" at 10, 12);
- m. There are a number of factors that indicate that the Filipino's statement is truthful. First, he has no reason to lie as he is a cooperating witness with the Philippine investigation, and there is sufficient documentation to indicate that he was the co-founder and second-ranking member in Ramzi Yousef's organization, Abu Sayyaf. See D.E. 2482 (Exhibits "S" and "M"). His statement that Muslims were being trained in Pakistan at a charitable organization through the international Islamic academy is consistent with the intelligence information of the Saudi Arabian General that Iraq had hired Pakistanis who might not know they were actually operating on behalf of Iraq. The use of an intermediary, i.e. the International Islamic Academy, and Islamic charity organizations would certainly disguise the role of Iraq. See D.E. 2482 (Exhibit "U").

  His statement that the United States is a target country is hardly surprising. The dates that he claims to have seen the subject of the investigation are consistent with the subject being in the Philippines (see D.E. 2482 (Exhibit "V")), and his statement that the subject identified himself as a "farmer" is likewise corroborative. Perhaps most important the fact that he saw them near a place where Muslims make bombs is consistent with statements by other witnesses who claim that the subject had a book on bomb making with him and wanted to know how or where he could find someone that knew how to make bombs. See D.E. 2482 at 25. In addition, the Filipino identified correctly Yousef's real name as Abdul Basit. See D.E. 2482 (Exhibit "W").

Finally, the arrest of McVeigh and Nichols is not necessarily inconsistent with this report. The district court has correctly summarized in the past that the defense theory is that once McVeigh was arrested, the government ceased pursuing an international connection because the arrest of McVeigh, and later Nichols, would seem to preclude a foreign involvement. However, material the defensne [sic] has submitted to the district court, indicates that there is a relationship between neo-Nazis in this country and foreign terrorist groups in Iraq and the Philippines. Moreover, the subject's actions as articulated at D.E. 2482 (Exhibit "AA") are entirely consistent with his seeking to find assistance in the Philippines on how to make a bomb.

The fact that Murad, while in custody, is a co-defendant and a close associate of the alleged ringleader of the bombing on the World Trade Center (and not incidently [sic] also the federal building in Manhattan) were a Ryder truck was used to carry a fertilizer bomb is also highly relevant. The materials also indicate that terrorist groups in the Philippines have been trained in Pakistan, and that some of these same Pakistanis fought in Afghanistan. See D.E. 2482 (Exhibit "X").

The revelations by the New York Times that the FBI was pulling out of the investigation in Saudi Arabia because of lack of cooperation by the Saudi government further tends to support this intelligence information. See D.E. 2482 (Exhibit "Y"); see also Exhibit "Z" (discussing the anti-American climate in Saudi Arabia). The Saudis would be greatly embarrassed if it should develop that either directly or indirectly they have been financing a training area of terrorists in Pakistan, which may have led to deaths of Americans, or they may simply fear that they will be upsetting Iran or Iraq if the finger of suspicion of the investigation should point specifically to those two governments.

The important point is these reports from the Philippines inferentially support the Saudi intelligence report. The arrest warrant of Abraham Ahmad as a material witness makes reference to three Middle Eastern men running from the Murrah building shortly after the explosion. See D.E. 2482 (Exhibit "EE" at 1).

Several eye witnesses, including the next to last survivor pulled from the wreckage, have identified an "olive complected" dark haired man (variously described as Middle Eastern, Indian, Hawaiian) as being the driver and/or occupant of a Ryder truck shortly before the explosion and seen outside the Murrah Building. The FBI authorized an All Points Bulletin ("APB"), which was broadcast on police radio, seeking information about a full-size brown pickup truck occupied by Middle Eastern males. See D.E. 2406 (Exhibit "C").

The subject of the investigation was present in the Philippines in November, 1994 until January, 1995. During this same period of time, Ramzi Yousef was also in the Philippines. See D.E. 2763 at 22. Yousef and two co-defendants, Abdul Hakim Murad and Wali Khan Amin Shah, were convicted on September 5, 1996 in New York City with conspiring to blow up eleven (11) United States jetliners. Yousef is generally regarded as the mastermind behind the World Trade Center bombing and the government plans to try him for that crime. Id. at 15.

Vince Cannistraro, the former Chief of Counterterrorism for the CIA (D.E. 2406 (Exhibit "B")), authored an article which appeared in The Boston Globe in April of 1995, suggesting the probability of foreign terrorist involvement, particularly Iraq, in the Oklahoma City bombing, while observing its similarity to the World Trade Center bombing. Cannistraro wrote, "Yousef had carefully prepared his escape, leaving under another name from New York the evening of the bombing. He abandoned his comrades to the police. If the Oklahoma bombing follows the same pattern, the foreign sponsors will have covered their trail carefully, leaving only the support cells of local adherents to face the prosecutor." D.E. 2406 at 3.

Ramzi Yousef was a Pakistani terrorist based in the Philippines. D.E. 2763 at 15-16. The Philippines is also the base camp for the Abu Sayyaf Group (ASG). Id. Abu Sayyaf consists of between 500 and 600 fighters and is funded by radical Middle Eastern Muslims. D.E. 2191 at 21; see general) D.E. 2763.

ASG was formed in 1991 and is based on the Philippine island of Mindanao, which is a largely Muslim region which has been for all intents and purposes at war with the Philippines for regional autonomy. Abu Sayyaf has been linked to an international terrorist cell which is alleged to have plotted the assassination attempt on Pope John Paul II when he visited the Philippines in January, 1995. Ramzi Yousef made contact with the Abu Sayyaf Group in the Philippines through his "Afghan connections." Id.

It has been reported reliably by Jane's Intelligence Review, a highly respected source for intelligence information, that "by all accounts, [Yousef] had ambitious plans to intensify his own Jihad against the U.S.A." In addition to the plot to assassinate the Pope, Yousef and his team, together with Abu Sayyaf support, were planning to attack the U.S. Embassy and other facilities throughout Asia. The bombing of Philippine Airlines Flight 434 on December 11, 1994 was simply a "test run" to smuggle a bomb through the Manila Airport. Id.

Abu Sayyaf's funding includes support from Muslim billionaires in the Persian Gulf including Osama bin Laden. Id.; see also D.E. 2763 at 17. Arab intelligence sources report that Osama bin Laden's funding of Islamic terrorist groups is "considerable" and is conducted through several companies he owns in Africa, Europe and the Arab world. During the Afghan War, Bin Laden was a "driving force" behind recruiting young Muslim zealots to join the Mujhedeen and he operated out of the northwest frontier province of Pakistan along the Afghanistan border. Bin Laden became a close associate of Sheikh Omar Abdullah Rahman, the blind Egyptian cleric who has been tried in New York and whom U.S. authorities believe is a kingpin in an international Islamic terrorist network. Id.

In February, 1995, United States authority named bin Laden and his Saudi brother-in-law, Mohammed Jamal Khalifa, among 172 unindicted co-conspirators with the eleven (11) Muslims charged for the World Trade Center bombing and the associated plot to blow up other New York landmarks. At the time Khalifa was linked to the World Trade Center bombing, he was already in prison in San Francisco because his visa was revoked on the grounds that he had failed to disclose when he obtained it in Jiddah, Saudi Arabia and that he was wanted in Jordan for a series of bombings carried out in Amman in 1993. Incredibly, Khalifa's presence in California went unnoticed until Abu Sayyaf attacked the Christian town of Ipil in April, 1995. Id.

Philippine intelligence documents indicate that Khalifa, who had at one time ran a Muslim religious center in the Philippines, was linked to Islamic organizations in a number of countries, including Iraq and Jordan. Khalifa was deported to Jordan and was cleared of all charges. Id. at 22.

While the brother-in-law of one of the financier's of Abu Sayyaf was being deported by the Americans after spending time in solitary confinement in a prison in San Francisco, one of Ramzi Yousef's co-defendants, Abdullah Hakim Murad, then on trial in New York City for conspiracy to blow up American airliners, readily admitted to a prison guard that he was a member of the Liberation Army, and that the Liberation Army was responsible for the bombing of the Murrah Building in Oklahoma City. Id. at 22-23.

The prison guard had asked Hakim Murad what he thought about the bombing when it was reported on the radio, and, according to a FBI 302, Murad responded to the guard's question by stating that the Liberation Army was responsible for the bombing and, a short time later, confirmed in writing that the Liberation Army was responsible for the bombing of the Murrah Building in Oklahoma City. Id.

The manager of the Great Western Inn at Grandview Plaza, Kansas, told the FBI that he observed the composite sketches of John Doe #1 and #2 when they were released, and stated that one of the sketches looked like a man who had checked into the motel on Monday, April 17, 1995 or Tuesday, April 18, 1995, the same time Tim McVeigh was staying at the Dreamland Motel. According to Mistry, the man was driving a Ryder rental truck which he parked in front of the motel and the man reminded Mistry of a "Moslem" and had a Middle Eastern accent. Mistry advised the FBI that the composite sketch of John Doe #2 "looked just like the man he described as having checked into the Great Western Inn on April 17, 1995 or April 18, 1995." D.E. 2191 at 23.

[CONTINUED IN PART FOURTEEN]

FOOTNOTES:

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[21] Ramzi Yousef was convicted in September in New York City of a conspiracy to blow up 12 American jumbo jets in one day and he is currently awaiting trial on an indictment charging him as the "mastermind" of the World Trade Center bombing.

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[22] Murad is a co-defendant of Yousef and told the FBI on April 19, 1995, a Muslim group, the Liberation Army in the Philippines was responsible for the bombing of the Alfred P. Murrah Federal Building.

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[23] These businesses introduce American males to Filipinas who are ostensibly "tour guides" for the visiting foreigners.

PART FOURTEEN OF EIGHTEEN:

VIII. PROCEDURAL HISTORY OF DISCOVERY REQUESTS.

A. Introduction.

Defendant McVeigh has compiled an indelible paper trail in attempting to obtain information in the possession of the federal government, particularly the intelligence agencies, which is relevant and material to his defense. Counsel for Defendant McVeigh does not lightly come before this Court seeking intervention in these matters; but there can be only so many requests, so many demands, and so many pleadings filed requesting this information before it becomes apparent to counsel that there is no effective way, absent court intervention, to obtain the necessary materials to construct a defense in this capital case.

So that the record is complete, and that the Court has confidence that the present Motion is filed out of legitimate exasperation as the result of being stonewalled for over a year since the return of the indictment, counsel for Defendant McVeigh invites the Court to review the following chart and accompanying materials, most of which may be found and perused in the separately bound appendices at D.E. 1921, 1922 and 1923. Defense efforts to obtain this material includes the following:

NO.
DATE
DESCRIPTION

1. August 10, 1995

Defendants Timothy McVeigh and Terry Nichols were indicted on one count of conspiracy to use a weapon of mass destruction, one count of use of a weapon of mass destruction, one count of destruction by explosives, and eight counts of first degree murder.

2. August, 1995

Counsel for Defendant McVeigh engages in discovery conversations and negotiations with counsel for the government concerning the production of exculpatory information. However, nothing is reduced to writing. These negotiations occurred within a few weeks after the return of the Indictment.

3. August 21, 1995

In a lengthy letter addressed to Joseph Hartzler, Special Assistant United States Attorney, from defense counsel for Mr. McVeigh, the defense pleaded the case with the government for a change of venue and for "full, complete discovery furnished to the defendant of all grand jury transcripts, 302's, witness statements, plea agreements and immunity deals, tangible evidence, tangible documents, scientific reports to the defendant as quickly as possible[.]" See D.E. 1921 (Vol. I Exhibit "D" at 11-12).

4. November 2, 1995

Letter to Joseph H. Hartzler, Patrick Ryan and Larry Mackey, addressing defense concerns over the production of forensic evidence, documentary evidence and witness statements. This letter pointed out that there had been "zero production of exculpatory evidence" and requested specifically exculpatory evidence and Rule 16 material. See D.E. 1921 (Vol. I Exhibit "E").

5. November 6, 1995

Defendant McVeigh's first written request for specific Brady information in a letter addressed to Joseph Hartzler. This request consisted of 60 paragraphs of specific requests for categories of exculpatory information over 10 pages in a letter directed to the lead counsel for the government prosecution team. The letter noted that the request was made because the government had failed to produce any exculpatory evidence to the defendant, even though Mr. McVeigh was arrested more than 6 months prior to the date of the letter, and indicted almost three months prior to the date of the letter. The defense team was finding out the possible existence of exculpatory information from the media rather from the government.

In paragraph 3 on page 3. Defendant McVeigh requested specifically any statements, reports or memoranda tending to indicate that the Murrah Building was a target of terrorists which were generated prior to or contemporaneous with the bombing on April 19. 1995.

Paragraph 18 on page 4 specifically requested material and reports of investigations regarding the bombing of the Murrah Building compiled by agencies other than the FBI including the BATF, the Central Intelligence Agency, the Army C.I.D., the National Security Agency, the Defense Intelligence Agency, and the Drug Enforcement Administration, the Department of Defense, etc.

In paragraph 47 on page 8. defense counsel for Mr. McVeigh requested specifically any and all intelligence reports in the possession of or generated by, any foreign government which were material to the identity of the perpetrators of the Murrah Building bombing. See D.E. 1921 (Vol. I Exhibit "F').

6. November 8, 1995

Letter from defense counsel to Joseph H. Hartzler setting out specifically the provisions of Federal Rule of Criminal Procedure 16(a)(1)(C) which provides that, upon request of the Defendant, the government shall permit the Defendant to inspect tangible objects which are material to the preparation of the defense. Defense counsel requested specifically "all remaining photographs, books, papers, documents, tangible objects not previously furnished to us". See D.E. 1921 (Vol. I Exhibit "G").

7. November 13,1995

Letter from defense counsel to Joseph H. Hartzler and Patrick Ryan outlining the practice of discovery in criminal cases for the United States District Court for the Western District of Oklahoma (where this case was then being heard) and followed by District Judges Russell, Leonard, Thompson, Cauthron, and Miles LeGrange. The local practice was to routinely grant permission to defendants to inspect, copy or photograph evidence favorable to the defendant within the meaning of Brady and Giglio and their progeny. Exculpatory evidence is typically delivered to the defense within 10 days after an entry of a not guilty plea.

Defense counsel set out in detail a portion of the opinion by former Chief Judge Fred Daugherty as reported in United States v. Penix, 516 F. Supp. 248, 255 (W.D. Okl. 1981) in which Judge Daugherty outlined the local practice concerning discovery pursuant to Rule 16 and Brady. Defense counsel requested specifically copies of the notification the government presumably had sent to law enforcement agencies with respect to Brady, Giglio, and Rule 16, specifically the Criminal Investigation Division of the Armed Forces, the Criminal Investigation Division of the Department of Defense, the Defense Investigative Agency, the Central Intelligence Agency. and other foreign and domestic agencies.

Defense counsel further noted that although the first specific written request for Brady occurred November 6, 1995, the defense had nevertheless consistently requested orally that the government produce exculpatory evidence. Finally, counsel stated specifically that the defense recognized the possible tendency in this case, given sensitive national security issues and the existence of other possible conspiracies to damage federal property, to withhold information from the defense, but that the defense would address those concerns and protect appropriately the government's intelligence gathering activities. See D.E. 1921 (Vol. I Exhibit "H").

8. November 20, 1995

Letter to Joseph H. Hartzler and Patrick Ryan consisting of Defendant McVeigh's third written request for exculpatory information on behalf of Defendant Timothy McVeigh. The defense requested specifically "copies of reports, witness statements, telex messages, cables, fax messages, photographs, intelligence summaries which relate or contain information which would indicate or suggest the possibility, likelihood and/or possibility that individuals or organizations or a single individual either in this country or abroad was planning or did execute action against the United States, its property or employees or American civilians in retaliation for" and then a lengthy list of specific events. See D.E. 1921 (Vol. I Exhibit "I").

9. November 21, 1995

Letter to Joseph Hartzler taking issue with Mr. Hartzler's statement that the FBI 302's containing statements from Eldon Elliott, Vicki Beemer, and the Fortiers did not contain exculpatory information. Defense counsel addressed directly concerns that the government's definition of "exculpatory information" under Brady was unduly restrictive. See D.E. 1921 (Vol. I Exhibit "J").

10. December 7, 1995

Defendant McVeigh's Report to the Court concerning the government's failure to produce discoverable evidence in accordance with the Court's Order of August 23, 1995, Rule 16 and the Brady decision. Defense counsel set out specifically concerns relating to the government's failure to seek discovery material from law enforcement agencies other than the FBI, specifically the intelligence agencies including the Central Intelligence Agency, the Criminal Investigation Divisions of the Armed Forces and the Department of Defense, the National Security Agency, the Defense Intelligence Agency and other federal, state and foreign investigative/intelligence agencies. See D.E. 1921 (Vol. I Exhibit "K" at 14-15). In this pleading, defense counsel observed the absurdity of the prosecutors in this case seeking a court order to obtain information from the Bureau of Prisons--a component of the Department of Justice.

11. December 21, 1995

Defendant McVeigh's Motion to Require the Government to Produce Exculpatory Evidence to Assist the Defendant, Timothy James McVeigh, in Establishing His Claim That He Is Not Guilty of the Offense Charged Against Him in the Grand Jury Indictment. This document set out in detail over 177 paragraphs encompassing 89 pages of specific and general requests for exculpatory information. Included in these requests were information of other suspects, see page 56, as well as information in the possession of a multitude of intelligence and law enforcement agencies. See D.E. 1922 (Vol. II Exhibit "L" at p. 84).

12. February 15, 1996

Letter to Beth A. Wilkinson regarding outstanding issues relating to discovery. This letter underscored the defense's frustration with the government's production of discovery, particularly Brady and Giglio items and requested yet again specific reports generated by the Central Intelligence Agency, the Criminal Investigation Divisions of the various components of the Department of Defense, the National Security Agency, the Defense Intelligence Agency, the Bureau of Intelligence and Research of the State Department, the Office for Combatting [sic] Terrorism of the United States Department of State, the National Security Council, the Department of Defense Special Operations Agency, and other domestic and foreign law enforcement agencies. See D.E. 1923 (Vol.III Exhibit "M").

13. February 15,1996

Letter to Beth A. Wilkinson requesting additional Brady material containing information concerning, among other things, information about the German Andreas Strassmeir and any connections with neo-Nazi or other white supremacist organizations. See D.E. 1923 (Vol. III Exhibit "N").

14. March 8, 1996

Defendant McVeigh's Motion for Disclosure of Discoverable and Exculpatory Intelligence Collected by the Central Intelligence Agency, the National Security Agency, the Departments of Justice and State, and Any Other Intelligence Gathering Agencies, Rule 16 Material and Brief in Support. This pleading set forth 31 paragraphs of specific discovery requests from specifically named intelligence agencies, and provided the factual and legal basis for the request. See D.E. 1923 (Vol. III Exhibit "O").

15. April 8, 1996

Specification of Materiality and Relevance of National Security Information as it Relates to the Defense of Timothy McVeigh (Ex Parte and Under Seal). This document, which the Court has reviewed, exparte and under seal, provided the factual basis, including the defense hypothesis for the prior request for national intelligence information filed March 8, 1996. See D.E. 1228.

16. April 9, 1996

Supplemental Motion to Motion for Disclosure of Discoverable and Exculpatory Intelligence Collected by the Central Intelligence Agency, the National Security Agency, the Departments of Justice and State, and Any Other Intelligence Gathering Agencies, Rule 16 Material and Brief in Support. See D.E. 1236.

17. April 24, 1996

Defendant McVeigh's Supplemental Specification of Materiality of Requested Classified Information (Filed Ex Parte Under Seal). See D.E. 1309.

18. April 29, 1996

Memorandum Opinion and Order on Motions for Production of Classified Information by Chief Judge Richard P. Matsch. See D.E. 1310.

19. May 6, 1996

Letter to Joseph H. Hartzler concerning an article in Strategic Investment magazine which referenced a classified Pentagon study concerning the bombing of the Murrah Building. This

letter requested information concerning this classified study. See D.E. 1923 (Vol. III Exhibit "P").

20. May 8, 1996

Letter to Joseph Hartzler in response to this Court's Order of April 29, 1996, recommending that defense counsel submit a direct request to government counsel to search for information which would most likely be classified and in the possession of the National Intelligence Agencies. This letter consists of 16 pages of single-spaced specific requests encompassing 53 separate paragraphs. Specifically mentioned is any and all "follow up" information generated by the government to verify or corroborate th information provided by Vincent Cannistraro indicating that Iraq may have sponsored the bombing of the Murrah Building which was found by defense counsel buried in the mounds of "non-pertinent" documents. See D.E.1923 (Vol. III Exhibit "Q").

21. May 23, 1996

Letter to Joseph Hartzler reiterating a multitude of specific Brady requests, and requesting information possibly provided by the governments of Israel and Kuwait concerning possible terrorist acts against this country around April 19, 1995, and Oklahoma City specifically as a potential target. See D.E. 1923 (Vol.III Exhibit "R").

22. June 14, 1996

Mailing en masse to 30 federal intelligence/law enforcement agencies and a host of other various state investigative/law enforcement agencies requesting material pursuant to Rule 16 and Brady and to which was attached a copy of this Court's April 29, 1996 Memorandum Opinion and Order on Motions for Production of Classified Information and the May 8, 1996, letter to Joseph Hartzler enumerating 53 paragraphs of specific discovery requests. See D.E. 1923 (Vol. III Exhibit "S"). This mailing went out when, after 45 days, the government had produced to the defense nothing had been received pursuant to the Court Order of April 29 as it related to the national intelligence data.

23. July 3, 1996

Letter to Joseph H. Hartzler requesting information concerning applications and orders filed in the Foreign Intelligence Surveillance Court and material obtained therefrom constituting Brady or Rule 16 material and as it relates to the bombing of the Murrah Building. See D. E. 1923 (Vol. III Exhibit "T").

24. August 22, 1996

Motion to Compel Production of Additional Intelligence Information and Memorandum to the Court Concerning Violation of the Government's Duty to the Defendant Under Brady and This Court's Order of April 29, 1996, Respecting National Intelligence Information. See D.E. 1898.

25. August 27, 1996

McVeigh's Motion to Compel the Production ofMaterial and Exculpatory Classified InformationPursuant to Rule 16 and Brady. See D.E. 1918; D.E. 1921 (Appendix Vol. I); D.E. 1922 (Appendix Vol. II); and D.E. 1923 (Appendix Vol. III).

26. August 27, 1996

McVeigh's Second Supplemental Specification of Materiality of Requested Classified Information ExParte and Under Seal. See D.E. 1929.

27. August 29, 1996

Supplemental Memorandum to the Court Regarding Motion to Compel Production of National Intelligence Information. See D.E. 1936.

28. September 3, 1996

Sealed Affidavit of Stephen Jones in Further Support of Motion to Compel Release of National Intelligence Data, Third Supplementation of Specification of Materiality and Developments Filed Ex Parte and Under Seal. See D.E. 1969.

29. September 30, 1996

Defendant McVeigh's Supplemental Discovery Requests for National Intelligence Information. See D.E. 2175.

30. October 1, 1996

Defendant McVeigh's Fourth Supplemental Specification of Materiality of Requested Classified Information (ExParte and Under Seal). See D.E. 2191.

31. October 10, 1996

McVeigh's Amended Motion to Compel the Production of Material and Exculpatory Classified Information Pursuant to Rule 16 and Brady (Supplemental Requests). See D.E. 2265.

32. October 31, 1996

Defendant Tim McVeigh's Statement of Materiality and Specificity With Respect to His Amended Motion to Compel the Production of Material and Exculpatory Classified Information Pursuant to Rule 16 and Brady (Supplemental Requests). See D.E. 2403.

33. October 31, 1996

Defendant McVeigh's Fourth Supplement of Specification of Materiality of Requested Classified Information (Vol. II). See D.E. 2406.

34. November 8, 1996

Fifth Supplemental Specification of Materiality of Requested Classified Information. See D.E. 2482.

35. November 12, 1996

Defendant McVeigh's Supplemental Discovery Requests for Classified Information. See D.E. 2490.

36. November 21, 1996

Supplemental Discovery Requests for Classified Information by Timothy James McVeigh. See D.E. 2533.

37. December 11, 1996

Memorandum to the Court Concerning Discovery of Classified Information as to Timothy James McVeigh. See D.E. 2649.

38. December 27, 1996

Defendant McVeigh's Supplemental Memorandum to the Court Outlining the Relevance and Materiality of Newly Discovered Information From the Philippines, Israel and the Middle East and Its Relevance to the McVeigh Defense (ExParte and Under Seal). See D.E. 2763.

39. December 30, 1996

Supplemental Motion to Compel the Production of Information in Possession of the Intelligence Agencies of the United States and Enumerated Discovery Requests. See D.E. 2768.

40. January 17, 1997

Motion for Reconsideration of Denial of Discovery Material (Under Seal). See D.E. 2966.

41. January 21, 1997

Motion for Production of Evidence of Prior Warning of the Oklahoma City Bombing Possessed by the Office of Executive Secretariat at the Department of Justice by Timothy James McVeigh. See D.E. 2984.

42. February 4, 1997

Motion to Compel Discovery Based Upon Newly Discovered Information or in the Alternative Request for Issuance of Subpoenas Duces Tecum Pursuant to Rule 17(c). See D.E. 3123.

43. February 26, 1997

Memorandum to the Court Regarding Motion to Compel Disclosure of Certain Information and Reports as to Timothy James McVeigh (Sealed). See D.E. 3313.

44. March 7, 1997

Defendant Timothy James McVeigh's Reply to the March 6, 1997, Response of the United States to McVeigh's Motion for Additional Discovery (Sealed). See D.E. 3372.

Thus, the defense has requested information acquired by, and in the possession of, the nation's intelligence and law enforcement agencies both orally and in writing, and informally in written letters and formally in written motions filed with the Court, since mid-August of 1995.

[CONTINUED IN PART FIFTEEN]

IX. GOVERNMENT EVASION OF ITS DISCOVERY RESPONSIBILITIES.

The trial judge below has devoted an extensive amount of judicial time to discovery issues in this case, the issues have been thoroughly briefed and argued in the district court and are the subject of two Court orders. See D.E. 1310 and D.E. 3016. No criticism is intended here toward his diligence or effort, but, in the spirit of effective advocacy, it appears to counsel from a careful study of how the respondent trial judge has handled this matter that he does not believe he has authority to enter orders compelling compliance pursuant to Rule 16 or Brady. Rather, the district court seems to have taken the position that these matters are to be resolved by the prosecutors in this case and the district court will rely upon the representations of the prosecutors on discovery matters. See, e.g., D.E. 3016 at 3; D.E. 3410 (Pre-Trial Hearing--Sealed--not provided to Defendant Nichols, March 10, 1997, at 34).

However, it has become very clear to counsel that the prosecutors in this case are simply not going to conduct a thorough search responsive to the requests of defense counsel. For just one example, government counsel candidly acknowledged that they had not requested information from the intelligence agencies concerning Dennis Mahon. See D.E. 2519 (Hearing on Motions--Volume V--Sealed, provided only to government and Defendant McVeigh, November 14, 1996, at 310-11).

Government counsel may believe, in good faith, that none of the requested information is relevant, but the perceptions of government counsel do not change the fact that the defense has made an extensive showing of materiality and relevancy. This information is vital to the defense. Without it, the defense is being denied the opportunity to prove or establish that its client is not guilty. An order from this Court is necessary so that there is no dispute, no "breathing room," as to the scope of the government's obligations to provide discovery material to the defense, and counsel requests respectfully a ruling as to whether the defense has made a sufficient showing of materiality as to the specific items requested.

The government does not deny that the bombing of the Murrah Building initiated what was arguably the most massive and intensive investigation into a criminal act in this nation's history. The government does not deny, and based upon the information in the public record as manifested in Defendant McVeigh's Motion for the Disclosure of Classified Information (D.E. 1079), it cannot deny that the national intelligence agencies of the United States government were involved and participated in the investigation of the bombing of the Murrah Building, at least in the "preliminary meetings." See D.E. 1238 (Vol. I Transcript of Hearing on Motions, April 9, 1996, at 92). The government has not denied that the intelligence and investigative agencies of the United States government have compiled volumes of information, some of which is classified, concerning the bombing of the Murrah Building.

As to intelligence agencies, the government has assured the district court and the parties to this case that these agencies simply do not possess any discoverable information, other than "claims of responsibility". D.E. 1620 (Transcript of Hearing June 18, 1996 at 11314). The prosecutors in this case are confident that the intelligence agencies possess no information which is discoverable to Defendant McVeigh because they have "sent letters" to the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency, requesting "all material they had under Brady, Rule 16 and Jencks Act and any information they had which would tend to show that these defendants did not participate in the crime or that others carried out the crime." D.E. 1238 (Vol. I Transcript of Hearing on Motions April 9, 1996, at 51).

In addition, the prosecutors in this case have directed correspondence to the Pentagon inquiring whether the Department of Defense has conducted a classified study of the bombing of the Murrah Building. See D.E. 1923 (Vol. III Exhibit "V"). The government has refused to provide defense counsel with a copy of any of these letters sent to the intelligence agencies and to the Pentagon. See D.E. 1923 (Vol. III Exhibit "W"). The defense therefore has no way of knowing whether the letter stated correctly what the Defendant requests and the government's duty pursuant to Brady; or whether these letters are in reality a "wink and a nod," to these agencies and are therefore simply empty, meaningless pieces of paper.

There are (at least) two (2) fallacies in the government's approach in attempting to obtain discoverable information from the intelligence agencies which undermine its assertions that the intelligence agencies possess no discoverable information and which make the denials by government counsel not creditable. The first fallacy is that counsel for the government understands properly the contours of the Brady decision and its progeny, that is, has a basic understanding of what the Supreme Court means when it held that the government must disclose exculpatory information to the defense in order for a criminal trial to be fundamentally fair. Because counsel for the government has exhibited such an extremely restrictive definition of Brady, and because it is the government counsel that frames the requests in the letters to the intelligence agencies, the agencies could in good faith respond negatively to the requests yet still possess discoverable material necessary for a proper defense in this case.

The second fallacy, and also the most fundamental, is that the alphabet soup of government, agencies which possess information responsive to defense discovery requests are in effect, separate fiefdoms of the federal government as opposed to a cohesive centralized federal government, and simply do not consider themselves part of this litigation, subject to the jurisdiction of the district court, or obligated in any way to respond to the requests of the Department of Justice lawyers representing the government in this criminal case. Each of these concerns will be addressed in turn.

A. The Government's Restrictive Definition of Brady.

There is no dispute in this case that the government must furnish to the defense information which is exculpatory and impeaching of government witnesses and evidence as those terms are defined in Brady v. Maryland, 373 U. S. 83 (1963) and Giglio v. United States, 405 U. S. 150 (1972). See United States v. McVeigh, 923 F. Supp. 1310, 1313 (D. Colo. 1996). The district court has articulated the obligations of the prosecutors to disclose such evidence and has observed that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Id. at 1313 (quoting Kyles v. Whitley, U.S. , 115 S. Ct. 1555, 1567, 131 L. Ed. 2d 490 (1995)).

The district court declined to enter an order compelling discovery on these matters, in part, by relying upon the representations of government counsel that the government had requested Rule 16 and Brady material from other government agencies and that the government was "being careful" and would "err on the side of caution producing more documents than we think would be necessary to turn over." Id. at 1313.

Leaving aside the compelling case to be made that government counsel's statements were at best disingenuous which is discussed in great detail in a pleading filed August 22, 1996 (see D.E. 1898), this Court should have no confidence in the government's representations concerning its efforts to locate and identify information in the possession of the intelligence agencies because

1. government counsel view their obligations pursuant to Brady in an impermissibly restrictive way, and

2. even assuming that the prosecutors are in tune with Brady, they have no authority to compel other government agencies to produce discoverable classified information and they are utterly powerless to act on behalf of the entire United States government in complying with constitutional and federal rules concerning discovery in this area.

The individual prosecutors in this case simply have no way to compel or require such agencies to conduct any search or inquiry of their files or investigative reports. There is no court order; just simply some Supreme Court decisions that the agency bureaucrat has not ever read. It is one thing to presume the good faith of Mr. Hartzler, but it is quite another thing to presume the good faith of the CIA station chief in Israel or Kuwait, or a research analyst at the NSA in Ft. Meade, Maryland.

In the April 29, 1996 Order (D.E. 1310), the district court stayed its hand in issuing a direct order compelling disclosure of classified information based upon the representations of government counsel. However, the district court's reliance upon the government's representations presupposed that the government counsel understands their duty pursuant to Brady and Rule 16 and that they have the means and authority to perform that duty. Neither of these presuppositions have proven true.

The district court, on the record, has expressed "concern" over statements made by the government counsel with respect to the government's discovery obligations pursuant to Brady and Giglio. See Transcript of Proceedings, December 13, 1995, at 44 (in the Western District of Oklahoma, Case No. CR-95-0110-MH), no docket number aligned. Government counsel had, on November 21, 1995, submitted correspondence to defense counsel stating that defense counsel's definition of "exculpatory information" was "far broader than ours [the government's]". See D.E. 1923 (Vol. III Exhibit "X").

In this letter, counsel for the government includes the astonishing sentence that, "In my opinion, nothing the Fortiers, or Eldon Elliott or Vicki Beemer said can fairly be characterized as exculpatory of your client." Id. Counsel for Defendant McVeigh has provided the district court with this example on several prior occasions, but its importance cannot be over-emphasized. Government counsel may, in good faith, view his obligations pursuant to Brady and Giglio in such a restrictive manner; but his view is clearly incorrect.

Because the distract court was "concerned" that government counsel took a restrictive view of their Brady obligations, the Court corrected government counsel on the record as follows:

> This word "exculpatory" has been misused a lot, I think. Not here, but generally. It's like, "to be exculpatory, it has to be something that proves you're not guilty." That isn't the case. It's something that may diminish the government's evidence and the credibility of its witnesses. (Transcript of Hearing, December 13, 1995 at 45 (Western District of Oklahoma, Case No. CR-95-0110-MH), no docket number assigned).

The most telling and insightful statement made by government counsel in this case concerning discovery then occurred after the district court made the above statement. After the Court had explained the definition of Brady and Giglio to government counsel, government counsel indicated in the very next sentence that he simply disagreed with the Court. He stated, "You accept Mr. Jones' definition, and I will abide by that, of course." Id. at 46. What government counsel dearly meant was that he disagreed with the district court's views concerning discovery and the government's Brady obligations, but simply recognized the Court's authority to define and make legal decisions in this case.

But the district court has declined to intervene in this protracted discovery dispute and has declined to order directly the government to produce exculpatory evidence. Thus, counsel for

Defendant McVeigh respectfully suggests to the Court that the prosecutors (and maybe even the government) may be acting in good faith in complying with its discovery obligations, but they are simply acting in accordance with their own narrow view of their duty to disclose exculpatory information and are applying their definition of Brady rather than the Court's. Because, despite what the government says, the government's actions have shown this to be the case.

There are other indications. In June, 1996, the government produced to the defense a multitude of FBI 302's, including a sheet of paper regarding Serial #14838. See D.E. 1921 (Vol. I Exhibit "A"). This sheet of paper advised the defense that Serial #14838 contained "classified material not associated with this case[.]" Id. Yet on July 31, 1996, defense counsel again received this same sheet of paper indicating that this "classified" material was not associated with this case, but attached to this description was the two aforementioned FBI 302's that have been the sum and substance of the government's production regarding classified intelligence information. Id.

These FBI 302's could not be more "associated with this case," more exculpatory of Defendant McVeigh, or more relevant and material to a defense to the charges in the indictment; and that is not to mention that the investigation of the information in these 302's occurred on the day of the bombing--April 19, 1995--but were "transcribed" on June 18, 1996, and provided to the defense July 31, 1996.

If this Court were to peruse D.E. 1923 (Exhibit "Y"), the Court would find extensive details concerning neurotic fringe persons making fanciful "confessions", and who are clearly unreliable and mentally unbalanced, while finding not a word about information relayed by a very senior officer in the intelligence community of a major American ally informing the United States government that a foreign power perpetrated the bombing of the Murrah Building. This is the type of petty gamesmanship that defense counsel has come to expect from the government, it is fundamentally unfair to Defendant McVeigh, it is contrary to this Court's explicit definition of Brady and Giglio, and if it continues unabated, it will ultimately result in a reversal of a conviction in this case should that occur.

Although the district court has recognized that the individual prosecutors in this case bear the burden of disclosure. Defendant McVeigh ultimately bears the risk of nondisclosure: his life. It is Defendant McVeigh whose interests are really at stake in this discovery dispute. The only reason that the individual prosecutors in this case have a duty of disclosure is to vindicate Defendant McVeigh's constitutional right to a fair trial. Thus, although the individual prosecutors are charged with the duty of disclosure, the relative risks of non-disclosure are stacked against the Defendant because the risk to the prosecution is reversal of a conviction and a retrial, but the risk to Defendant McVeigh is his very life. The prosecutors in this case are, and there is no other diplomatic way to articulate it, trifling with the administration of justice in this capital case and this Court must simply put a stop to it. Judicial oversight of the discovery process in this case is the only method of assuring compliance. It is, we respectfully submit, long overdue.

The fundamental misunderstanding and distortion of Brady by government counsel is critical in this case because the only method by which they have attempted to acquire classified intelligence information is through letters sent to the various agencies, specifically the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, "asking them for all materials they had under Brady, Rule 16 and Jencks Act and any information they had which tend to show that these defendants did not participate in the crime or that others carried out the crime." See D.E. 1238 (Vol. I Transcript of Hearing, April 9, 1996 at 51).

However, counsel can have no faith in these "letters" sent by government counsel to the various intelligence agencies because government counsel have a view of Brady that is at odds with the controlling legal authority. There thus exists a situation whereby an intelligence agency could in good faith respond negatively to an inquiry from government counsel, yet still possess information that it would be required to disclose under the appropriate definition of Brady and that of the Supreme Court cases. Counsel for the government have refused to provide the defense with a copy of their requests to the intelligence agencies. See D.E. 1923 (Vol. III Exhibit "W").

The district court explicitly declined to approve or disapprove the government's letters to the intelligence agencies. See D.E. 2519 at 305. The district court articulated its concerns, stating that the court was not going to provide a "shield" to anyone by saying that the court has put its seal of approval on the letters. Id. The court then recognized that it was the ultimate responsibility of government counsel to produce discoverable information. Id. at 6. Defendant McVeigh is thus forced to rely upon the "good faith" of the government[24] to perform its disclosure obligations.

But Defendant McVeigh will never be content under any circumstances to rely upon the "good faith" of any agency of the United States government. The United States government is a party opponent in this case, an adversary with virtually unlimited resources, and is aggressively seeking to execute Mr. McVeigh. Counsel for the government, and for that matter the personnel staffing the agencies of the federal government, are litigants in this case, they have a vested interest in this prosecution and in obtaining a conviction and death sentence, it is in their interests to not disclose information or to disclose as little as possible, and the defense will never be content to "take their word for it" or rely upon their "good faith".

In the "ordinary" capital case, there may be no reason to question the good faith representations of the prosecution or even the state government (although the case law would certainly suggest numerous instances of unjustified reliance or reliance misplaced or abused). But this is not an ordinary case. This is a case where the government itself was the target. Employees of the plaintiff were injured or killed. More than 15 government agencies lost employees to death. Whole departments and regional offices were destroyed, their work set back for months, in some cases years, and in still other cases, can never be resumed.

Among these agencies were numerous law enforcement agencies, in fact, every major federal law enforcement agency except the FBI. The ATF, Secret Service, Drug Enforcement Agency and the Department of Defense, CID, and even the Postal Inspectors (their building was catty-corner from the Alfred P. Murrah Building) were involved as victims. Under these circumstances, with 168 dead, 500 injured, and damage estimated at three quarters of a billion dollars, it is not appropriate to rely upon their good faith, any more than it was appropriate to rely upon Oklahomans as jurors, and for the same reasons.

These government agencies do not honor the presumption of innocence, and they are not going to help the defense provide our client with a fair trial. They just are not. The drum beat of prejudicial leaks, courthouse video-taped walkouts, presidential press conferences, and indeed the size and magnitude of the crime itself, and its novelty on these shores, all worked to prejudice the defense preparation in multiple ways. Some of the effects have included massive media interest with the result that many important fact witnesses refused to talk with the Defendant's counsel and investigators. When civil suits were filed by victims which might have afforded the defense the opportunity, legitimately, to take depositions of lay witnesses, the suits were dismissed on the eve of the depositions, or when the plaintiffs would not or did not dismiss, the government sought a stay. The result being that many sources of information were--and still are--cut off though these same witnesses continue to talk to FBI agents and to the press.

The inability of the defense to depose witnesses allowed the FBI to go back to key defense witnesses and intimidate them by asking for polygraph tests and telling them "you did not see what you claimed to have seen." The defense was also prejudiced because there was a massive overwhelming sense of collective judgment that the Defendant was guilty, and that was it. The trial would be simply to rubber stamp of the validity of the arrest and public relations campaign in the press that our client is guilty. Government agencies, and others, simply refused to consider the possibility of innocence, or that others might be involved, even a foreign connection. One wonders how many American have to die in the World Trade Center, over Lockerbie, in a military barracks in Saudi Arabia, or off Long Island to realize that there is nothing remote, fanciful or inconsistent about the same foreign hands (or others) being involved in the bombing of the Murrah Building.

The government does not produce truly exculpatory evidence because it does not believe it exists. Or, if it exists, it is not credible (or so they claim). Either the Defendant has established that the material he seeks from the national intelligence agencies is exculpatory or he has not. If he has, then he needs a court order to pry it out, or at least, if that does not work, there will not be any dispute later as to what should have been done. The district court relied on good faith professed on the part of the prosecution, but the defense does not see any compelling need to rely upon the good faith of the Deputy General Counsel of the DOD, William Sheehan and his counterparts throughout the federal bureaucracy, because he does not have any. See D.E. 1923 (Exhibit "CC").

In fact, Mr. Sheehan's knowledge of his legal obligations under the Constitution is so wrong it is breathtaking in its audacity: The Department of Defense is not a party to this suit and is not bound by the Court's order. The last time the defense looked at the Indictment it was captioned "United States of America" versus Tim McVeigh, not 'The Department of Justice" versus Tim McVeigh. This district court's order of April 29, 1996 (D.E. 1310) directed a response from the government as a whole. To paraphrase a currently politically correct statement used in another context: the government agencies just don't get it.

The government may respond once again citing gross numbers of discovery items produced, but that is hardly the issue. Have we received everything pursuant to a specific request, not just some of it, or fifty percent of it or even ninety-nine percent of it? If there is a specific request, and the government claims it has supplied it all, then it should inform the defense which discovery items are responsive and sign a paper with the district court that the defense has it all instead of just waiving a hand at a warehouse full of papers and tangible objects and say: it's in there. The government hopes that in the abundance of irrelevant material it has furnished the truly relevant will not be missed. The defense comes before the Court at this time and seeks invocation of the Court's authority to take control of the discovery process in this case.

There are a myriad of examples where the government has, in the defense's view, stonewalled, delayed, and obstructed the discovery process in this case. Examples include the following:

> **1. Carol Howe:** As discussed supra, the government provided to the defense information that we now know came from Carol Howe, but that was presented to the defense on January 26, 1996, in such a way that every proper noun was grossly misspelled and Carol Howe was referred to as a confidential informant named "Carol"--indicating that Carol may not have been her real name (or the informant may not have even been a female) and certainly did not give a last name. Such was the excess of the sloppy (or the defense believes more likely intentional) spelling in this report, the government itself could not even find it when the Court ordered it to respond to defense requests concerning this information and this particular report was omitted. In isolation, the defense might have been willing to credit the government's claim that it could not find this

particular insert, but since it follows a clear pattern of government careless handling of exculpatory information, the defense now believes that it was deliberate. But that is not to say that the individual prosecutors in this case did it. The defense believes that over zealous investigators within the ATF and the FBI are likely responsible.

In addition, government counsel stated to the Court, as discussed supra, that Carol Howe had been dismissed as an ATF informant in March 1995, when in fact, as the ATF knew, she had become an ATF informant again in early May 1995. Government counsel advised the district court of these facts only when defense counsel brought it to their attention.

2. Government characterization of Brady: Government counsel, by written letter (D.E. 1923, Exhibit "X") represented to defense counsel that in its opinion, no statements made by Michael Fortier, Lori Fortier, Eldon Elliott or Vickie Beemer could be characterized as exculpatory. Defense counsel believes this statement is a compelling insight into the government's view of its Brady obligations which underscores the need for judicial intervention. The statements made by those individuals are so exculpatory that lengthy hearings have been held before the district court concerning their contradictory statements concerning clothing worn by "Robert Kling," who Kling was with, and what the other person looked like. The statements of these individuals are so obviously exculpatory under the existing case law that, when defense counsel received government counsel's letter containing these statements, there was an immediate red flag raised and defense counsel was placed on notice to monitor discovery matters very carefully. Defense counsel is now convinced that the government in this case will not honor its discovery and Brady obligations absent judicial intervention.

3. Information from Saudi Arabia: This information is discussed more fully in D.E. 1898, but the concern to the defense is that the government received facially credible information from a foreign intelligence officer that Iraq had targeted specifically the Murrah Building by contracting seven (7) Afghani freedom fighters residing in Pakistan to carry out the bombing. The government became aware of this information the day of the bombing-April 19, 1995--yet, the two simple reports generated by the government were provided to the defense under the guise of being "possibly non-pertinent" nearly one year after the bombing and spread out over five months, although the two reports were transcribed on the same day. See D.E. 1898 (Exhibits "3" and "4").

4. "Master Minds": As discussed supra, the government indicated to the district court that it had no information that any persons other than the charged Defendants were the "master minds" of the bombing of the Murrah Building. But this statement was made at a time when the government was in possession of the information relayed from Saudi Arabia concerning Iraq targeting the Murrah Building and using Afghan rebels to carry out the bombing. The government clearly had information that persons and/or organizations other than the charged Defendants were the master minds of the bombing. It is only when the defense points these things out that the government then retreats and amends its disingenuous statements as "there was no underlying credible information" that others (as the Grand Jury noted "unknown others") were responsible for the bombing.

5. Andreas Strassmeir: Information received from the government concerning Andreas Strassmeir indicates certain symbols concerning Mr. Strassmeir's immigration information. See attached Exhibit "A." Government counsel made

representations to the district court as to what these symbols "A" and "O" mean. See D.E. 3410 (March 10, 1997, transcript at 11). The defense was informed that "A" means "admitted" and "O" means "overstay." However, it appears to the defense that according to the State Department's own chart of the meanings of certain symbols, "A" means "diplomatic visa" and "O" means "extraordinary ability." See attached Exhibit "I."

[CONTINUED IN PART SIXTEEN]

FOOTNOTES:

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[24] The same government that seeks his conviction and execution.

PART SIXTEEN OF EIGHTEEN:

>From a review of the documents in attached Exhibit "A," it is clear that the "O" designation appears on Strassmeir's immigration records at a time when he clearly would not have been an overstay. The first four trips to the U.S. made by Strassmeir have the "A/O" designation when he did not overstay, and the last trip, when he did overstay, do not indicate "A/O." In addition, the comments by Mr. Brown on the last page of Exhibit "A," and incidently [sic] Mr. Brown is in a position to access all of Strassmeir's immigration records, indicate that Strassmeir overstayed on his last trip only--exactly the opposite of government counsel's representations on March 10, 1997.[25]

In addition, the district court directed the government to inform defense counsel whether Andreas Strassmeir was an informant for the ATF or other law enforcement. Government counsel has since given this information to the defense, but two months after the court ordered it, and then only during a hearing before the district court discussing these matters. The defense realizes that there are occasions where delays between the prosecution and the defense occur when furnishing information, and certainly the defense has been tardy, but in this particular instance, this information was crucial to the defense and it was simply withheld without explanation for two months.

The defense will not rely upon government representations because experience has taught us that the representations are subject to change at any time. There is a pattern here of the government representing information, the defense pointing out that the information is incorrect, and then government back pedaling and retreating to a position of safety. The defense has entreated the district court for judicial authority to put an end to this government conduct, but the district court has not entered any orders.

The government has no interest in providing the information requested by the defense. There is no penalty for their failure to do so, other than the potential threat of appellate litigation years down the road. The government is under incredible pressure to obtain convictions and death sentences in this case at trial. But the penalty for Mr. McVeigh is forfeiture of his life--if the government fails to produce information requested by the defense and Mr. McVeigh is convicted and given the death sentence, he will be strapped on to a gurney and a lethal dose of drugs will be injected into his veins. These are the reasons why the defense believes that intervention by this Court is absolutely necessary in order to ensure the fundamental fairness of Mr. McVeigh's trial, and to leave no doubts concerning the scope and type of information that the government must furnish.

B. Counsel for the Government Are Powerless to Effect Disclosure of Discoverable Information from National Intelligence Agencies.

In the defense's view, the articulated position of government counsel concerning its discovery obligations and its subsequent non-production of Brady material in the possession of the national intelligence agencies, is more than enough to warrant court intervention. However, even assuming prosecutorial good faith and fidelity to Brady and Rule 16, there is a much deeper, more fundamental piece of the puzzle in this case which necessitates oversight by the Court. At its core, the defense's concern is that the other agencies of the federal government simply do not consider themselves a part of this litigation, subject to the jurisdiction of the Court, or obligated in any way to cooperate with the individual counsel representing the government in this case.

The counsel for the government have been given the mandate to disclose discovery material to the Defendants on behalf of the entire United States government, but these men and women simply do not have the authority to accomplish this task. The United States government is so

large and so compartmentalized into various agencies that consider themselves self-contained, that cooperation between the Department of Justice and the national intelligence agencies is the exception rather than the rule. Only this Court has the authority to compel the national intelligence agencies of the United States government to comply with the criminal discovery process in this case. Absent court intervention, it simply will not occur.

Federal Rule of Criminal Procedure 16(a)(1)(C) provides:

> Upon request of the defendant the government shall permit the defendant to inspect and copy and photograph, books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation to the defendant's defense or are intended for use by the government as evidence in chief at the trial or were obtained or belonged to the defendant. (bold emphasis added.)

It is Defendant McVeigh's position that this rule of criminal procedure means what it says, and that the reference to the "government" means all branches and agencies of the United States Federal Government. The Plaintiff in this litigation is the United States--not the Department of Justice--and the breadth of the government's discovery obligations should span the entire federal government. The district court's Order of April 29, 1996 (D.E. 1310), supports Defendant McVeigh's position. The district court recognized that even though government counsel indicated that the intelligence agencies were not "aligned" with the criminal investigation of this case, that fact did not limit the prosecution's duty to provide discovery from these agencies if they possessed information which may be exculpatory or impeach the government's case. See United States v. McVeigh, 923 F. Supp. 1310, 1315 (D. Colo. 1996). The district court then framed government counsel's charter and stated that "the prosecutors must respond to the defendants requests for information from a broad perspective of the government as a whole." Id.

Counsel for the government in this case are incapable of doing so. As an initial matter, the defense understands the government's representations to the district court on June 18, 1996, to be simply that the national intelligence agencies have not provided any information to government counsel (other than "claims of responsibility"), rather than taking the position that the national intelligence agencies do not possess such information. In other words, counsel for the government have not physically inspected all information in the possession of the intelligence agencies of the federal government and concluded that nothing is discoverable, rather government counsel has simply made requests to the agencies and the "intelligence agencies have produced no information for us [government counsel] that falls under Brady and that would provide any exculpatory information to the defense." D.E. 1620 (Transcript of Proceedings, June 18, 1996, at 114).

This distinction is critical because counsel for the government do not physically possess the documents and information which are in the possession of the national intelligence agencies. They seek to discharge their duty to provide discovery in this case pursuant to Brady and Rule 16 by formulating "letters" to the intelligence agencies and then proceed to make statements to the Court and to defense counsel based upon the responses. But this method of investigation is wholly inadequate because government counsel have no authority to compel production from the intelligence agencies, and the intelligence agencies themselves do not recognize any duty or obligation on their part to provide discovery in this criminal case.

These statements are supported by the events of the latter part of 1995 in which the defense observed the spectacle of government counsel in this case filing a motion to obtain records from the Bureau of Prisons--a component of the very same Department of Justice and under the direct authority of the Attorney General of the United States. Yet, the same government

counsel expect to satisfy this Court and the defense that a "letter" from government counsel will be adequate to persuade the intelligence agencies of the federal government, which are not a part of the Department of Justice, to produce national secrets for consumption by the defense. It is absurd.

Counsel for Mr. McVeigh received a letter from government counsel, dated September 12, 1995, addressing a prior request of defense counsel for tape recorded conversations of Mr. McVeigh generated by the Bureau of Prisons. The Bureau of Prisons is a component of the Department of Justice, as are United States Attorneys, and as is the FBI. The government's response was that, although they had obtained some recordings, "any additional recordings will only be provided with a trial subpoena or express court order." See D.E. 1923 (Vol. III Exhibit "Z"). Thereafter, on October 27, 1995, the government filed an extraordinary pleading in which the United States of America sought a court order directing the Bureau of Prisons to produce the taped conversations of the Defendants. See D.E. 1923 (Vol. III Exhibit "AA").

Defendant McVeigh responded to this pleading, noted its absurdity, and raised a concern that the government was posturing and may have ulterior motives in filing such document. The defense pleading, while not opposing the government's motion, took exception to it and articulated the hope that the government, by filing the motion, was not "attempting to create a precedent by a narrow restrictive reading of the government's obligation to produce discovery." See D.E. 1923 (Vol. III Exhibit "BB"). It seems that the defense's concerns had merit unfortunately and our prediction has proven true. The defense is unaware of any motion filed by the government seeking an order for any intelligence agency to produce discovery. The defense is aware of no explanation as to why a court order was necessary to obtain Mr. McVeigh's own statements from the Bureau of Prisons within the Department of Justice but is apparently, in the government's view, unnecessary in order to obtain national secrets from agencies outside the Department of Justice. For that matter, defense counsel is unaware of any "letters" sent from government counsel to any of the intelligence agencies, other than representations made by government counsel. They simply refuse to provide us copies of these "letters". See D.E. 1923 (Vol. III Exhibit "W").

So, there is absolutely no reason to believe that even government counsel have any faith that "letters" from the prosecution will prompt the intelligence agencies of the federal government to provide government counsel with discovery. If it takes an order from a federal district judge to compel the Bureau of Prisons, a unit of the Department of Justice, to provide discovery concerning the Defendant's own recorded conversations to the prosecutors in this case, then it surely requires an order of this Court to compel the intelligence agencies to produce information properly discoverable pursuant to Brady and Rule 16.

The critical lesson to be learned from the whole episode of the government's Motion and Order for Production of Information from the Bureau of Prisons is this: government counsel have recognized the limitations of their office. Government counsel probably cannot be faulted for this, because after all they cannot enlarge their own authority or the authority of their office, but it is disingenuous for government counsel to acknowledge the limitations of their office in dealing with the Bureau of Prisons, yet on the other hand try to convince the Court and defense counsel that the intelligence agencies possess no discoverable information simply by virtue of the fact that the U.S. Attorney has requested it and it has not been produced.

The simple fact is that there is a wall of separation between the various agencies and departments of the Executive Branch of the federal government, they are for the most part co-equal, and function independently of each other. The letter from Mr. Sheehan, Deputy General Counsel for the Department of Defense, received June 20, 1996 by the defense is an excellent example of this dynamic at work. The relevant passage is set out below:

Neither the Department nor its components is a party to this litigation, and the opinion of Judge Matsch attached to your letters imposes no discovery obligations on them. See D.E. 1923 (Vol. III Exhibit "CC"). The Department of Defense said essentially to the district court, 'The Department of Justice may have to produce information to the defense but we don't." It is a vivid illustration of the limitations of the investigative powers of the U.S. Attorneys and a stark reason for this Court to intervene and order the Department of Defense and other intelligence agencies directly to comply with the rules of discovery in this criminal case.

The applicability of Brady and Rule 16 is an all or nothing proposition. The intelligence agencies and the other various and sundry agencies of the Executive Branch are either under the jurisdiction of this Court and are bound to comply with discovery orders or they are not. Just as a person cannot be "a little bit pregnant," the intelligence agencies of the federal government cannot be "somewhat accountable" to divulge discovery to the defense. The Department of Defense clearly perceives itself as being exempt from discovery obligations in this case. The Defendant invites the Court to instruct the Department of Defense otherwise, and to use the Court's power and authority to enforce the discovery rules in this case.

The wall of separation between the FBI and the intelligence agencies springs naturally from the distinct responsibilities of these two components of the federal government. The FBI investigates domestic criminal acts; while the intelligence agencies' main responsibility is to acquire information regarding the security of the United States from foreign sources. Counsel for the government observed correctly that the National Security Act of 1947 prohibits the intelligence agencies from investigating U.S. persons for domestic criminal violations. See D.E. 1238 (Transcript of Proceedings, April 9, 1996 at 50).

But counsel for the government went on to state, and this is the logical flaw in the statement, that, "Therefore, the NSA, the CIA, and the DIA, the Defense Intelligence Agency, were not involved with this investigation." Id. Counsel for the government presupposes that the bombing of the Murrah Building was the result of an entirely domestic criminal act. We do not. This is precisely why it is a logical fallacy for the government to say that the National Intelligence Agencies do not investigate crimes, therefore they have not investigated this case.

On the contrary, the National Intelligence Agencies, while they may not have specifically investigated "this case," would have most certainly, and indeed would have been completely inept if they had not, investigated the bombing of the Murrah Building. In other words, the intelligence agencies investigated the event from the perspective of acquiring information necessary for the National Security, rather than investigating the event as the Department of Justice did in seeking to bring the perpetrators to justice. The investigations conducted by each are wholly distinct and the information generated by each investigation would not necessarily be the same, and would probably not be the same.

These differences were cogently illustrated by the highly regarded Foreign Policy Research Institute of the University of Pennsylvania, when it observed:

> While these are reasonable questions, they reveal a lack of understanding about how the U.S. government works when legal and national security issues of this special sort overlap. A high wall, in fact, stands between the Justice Department, including the Federal Bureau of Investigation, on the one hand, and the national security agencies on the other. Once arrests are made, the trials of individual perpetrators take bureaucratic precedence over everything else. The Justice Department inherits primary investigatory jurisdiction, and the business of the Justice Department is above all the prosecution and conviction of individual criminals. Once that process is underway, the Justice Department typically denies information to the national security bureaucracies, taking the position that passing on information might "taint the evidence" and affect prospects for obtaining

> convictions. "The World Trade Center Bomb: Who Is Ramzi Yousef? Why It Matters," The National Interest, No. 42, Winter 1995/96 at 4.

This "fire wall" separating the intelligence and law enforcement communities was noted as recently as August 20, 1996 in the New York Times, in an article written by Larry Johnson, former Deputy Director of the State Department's Counterterrorism Office from 1988 to 1993. See D.E. 1918 at 34. Mr. Johnson noted the "problem" of the lack of coordination between the FBI and the CIA. Thus, the relationship between the FBI and the intelligence agencies is understandable, but hardly surprising, since the intelligence agencies' primary duty is, of course, to keep secrets. But there are a few select situations in which information in the possession of the national intelligence agencies, or even the President of the United States may be divulged, one of which is a criminal prosecution. See United States v. Richard M. Nixon, President of the United States, 418 U. S. 683 (1974). But if an intelligence agency is unwilling to divulge discoverable material, counsel for the government cannot force them to do so, and neither can counsel for Defendant McVeigh. That is the reason that this Court must now get involved.

So, in sum, counsel for the government have neither the authority nor the inclination to conduct a vigorous effort to obtain discoverable information in the possession of the National Intelligence Agencies and to divulge such information to the defense. The defense has a good faith belief that such information exists, that it is discoverable, and has provided a factual basis for the materiality of such evidence. The defense now asks the Court to take action and order such information produced.

X. ARGUMENT.

A. Judge Matsch's Denial of Mr. McVeigh's Discovery Motions is Reviewable Upon Petition for Writ of Mandamus.

Mr. McVeigh's right to the requested discovery material is dear and indisputable. Moreover, mandamus is the appropriate means of reviewing a district judge's denial of discovery motions. In re Joint Eastern & Southern Districts Asbestos Litigation, 22 F.3d 755, 764 (7th Cir. 1994). As the Supreme Court noted in Roche v. Evaporated Milk Assn., 319 U.S. 21 (1943), mandamus is traditionally used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it has a duty to do so." [26]

As this Court held in Texaco, Inc. v. Chandler, 354 F.2d 655 (10th Cir. 1965), cert. denied, 383 U.S. 936 (1966):

> The jurisdiction of this court to take action to guarantee a fair and impartial trial is no longer open to question. Upon an adequate showing, this court has held that it has the "power and inescapable duty," whether under the all writs statute, 28 U.S.C. 1651, or under its inherent powers of appellate jurisdiction, to "effectuate what seems to us to be the manifest ends of justice." 354 F.2d at 657 (quoting United States v. Ritter, 272 F.2d 30, 32 (10th Cir. 1959), cert. denied, 362 U.S. 950 (1960)).

The remedy of mandamus is a drastic one that should be invoked only in extraordinary circumstances. Will v. United States, 389 U.S. 90, 95 (1967). However, extraordinary circumstances abound here. Mr. McVeigh goes on trial for his life in one week. A system that would take life must first give justice. This is a case where there is no smoking gun. There has been no confession. There has been no admission of guilt. The eyewitness testimony proffered by the government so far is in disarray and is contradictory. The FBI forensic laboratory is

itself under serious challenge by senior agents in scientific analysis and its critical flaws have been amply documented by the Inspector General of the United States Department of Justice. Michael Fortier, the government's star witness, has made contradictory public statements.

By not tendering the information requested in this motion, the federal government is simultaneously prosecuting Timothy McVeigh while at the same time attempting to restrict his ability to use information that is necessary to defend himself. See United States v. Fernandez, 913 F.2d 148, 154 (4th Cir. 1990). As the Fourth Circuit has stated, courts must not be remiss in protecting a defendant's right to a full and meaningful presentation of his claim to innocence. Id. Timothy McVeigh is constitutionally presumed innocent and now seeks an order from this Court commanding the government to produce that which is relevant to his defense and to which he has no other means of access. The district court's refusal to compel discovery in this capital case severely hamstrings Mr. McVeigh's ability to defend against the charges and prejudices Mr. McVeigh's right to a fair trial.

B. Federal Rule of Criminal Procedure 16 Entitles Mr. McVeigh to the Requested Discovery Material.

Federal Rule of Criminal Procedure 16 provides in relevant part:

> Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant. Fed. R. Crim. P. 16(a)(1)(C).

The material Mr. McVeigh requested under Rule 16(a)(1)(C) is both material and relevant to his defense. Mr. McVeigh's discovery requests are relevant and material in that all information obtained by the United States from intelligence sources that identify foreign or domestic groups or individuals other than Timothy McVeigh as being either responsible for, or suspected of involvement in the bombing is discovery absolutely necessary to the development and presentation of his defense.

In Bankers Life & Coal Co. v. Holland, 346 U.S.379 (1953), the Court held that when a petitioner can show either an usurpation of power or a clear abuse of discretion, the right to mandamus is clear and indisputable. The court below abused its discretion when it ignored its obligations under Rule 16. Rule 16 entitles the defense to any information that is relevant and material. The trial court's refusal to compel the government to produce the requested information violates the rules of discovery. Although the trial court is vested with wide discretion concerning matters of discovery, this discretion is not unbridled and it was abused here.

Rule 16 permits discovery that is "relevant to the development of a possible defense." United States v. Mandel, 914 F.2d 1215, 1219 (9th Cir. 1990) (quoting United States v. Clegg, 740 F.2d 16, 18 (9th Cir. 1984)). The mere fact that some of this information may be classified is of no moment. The standard for discovery of classified information is low, and is very easily met in this case.

In order to prevail on a discovery request for classified information, a defendant must make a threshold showing that the requested material is relevant to his case. United States v. Yunis, 924 F.2d 1086, 1095 (D.C. Cir. 1991). This standard is little more than the "low" legal hurdle of relevance. United States v. Yunis, 867 F. 2d 617, 623 (D.C. 1989) (the district court properly noted that the defendant must show that the statements sought crossed the low hurdle

of relevance); United States v. Yunis, 924 F. 2d 1086, 1095 (D.C. Cir. 1991) (threshold showing that the material is relevant is a "low" hurdle); see also United States v. Rezaq, 156 F.R.D. 514, 519 (D.D.C. 1994) (the threshold showing for a defendant to prevail on a discovery motion for classified information is not a high one).

Significantly, the requested discovery need not directly relate to Timothy McVeigh's guilt or innocence. Id. Rather, the requested information must simply "play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." Rezaq, 156 F.R.D. at 519 (citing United States v. George, 786 F. Supp. 11, 13 (D.D.C. 1991)). Thus, the requested information in this motion is discoverable under the applicable legal standards.

But there is another concern here. Factually, this case is in a class by itself Counsel cannot think of any other criminal prosecution in which the full focus of the federal government's massive resources,[27] including military and intelligence resources, have been directed worldwide with the sole purpose of identifying and apprehending the persons responsible for the crime of which Mr. McVeigh stands accused.

Even the bombing of the World Trade Center in Manhattan lacked the identifiable targeting of the federal government specifically, not to mention the catastrophic casualties present in the bombing of the Murrah Building. This case simply stands alone. To the extent that the federal government has spared no resource in its investigation, it would be fundamentally unfair to deny to Mr. McVeigh a fraction of the product of that investigation when the fruits are relevant and material to the defense in this capital case.

Moreover, the relevancy and materiality of the discoverable intelligence information sought should be viewed with an eye towards the difficulty in proving such qualities at this early stage of what will certainly be a complex criminal matter. See United States v. Poindexter, 727 F. Supp. 1470 (D.D.C. 1989) rev 'd on other grounds, 951 F.2d 366 (D.C. Cir. 1991). The language and spirit of the discovery rule is designed to afford an accused, in the interest of fairness, the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case. Id. at 1473. The Court in Poindexter felt it best to resolve close or difficult discovery issues in favor of the defendant.

The language and the spirit of the Rule are designed to provide to a criminal defendant, in the interest of fairness, the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case. Moreover, because of the CIPA process, the Court will have an opportunity to address once again the issue of the materiality of classified documents that have been produced and their use as evidence. For these reasons, . . ., the court has been inclined to err on the side of granting discovery to the defendant of matters that may fairly be encompassed within the indictment, and it has generally resolved close or difficult issues in his favor. Id. (footnotes omitted) (bold emphasis added); see also United States v. Rahman, 870 F. Supp. 47, 51 (S.D.N.Y. 1994) (Brady and its progeny deal with the issue of materiality after a conviction and provide only limited guidance before trial when the significance of some evidence may not be fully apparent).

[CONTINUED IN PART SEVENTEEN]

FOOTNOTES:

[25] A defense source informs us that special status is specific to the computer system, is confidential and is available only to intelligence investigation apprehension and detention.

There is no code system where "A" is "admitted" or "O" is "overstayed." "A" always means "diplomatic" and the information that "A" meant "admitted" and "O" meant "overstayed," according to our sources intimately familiar with INS records and State Department visa records, is simply inaccurate.

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[26] According to the All Writs Act, "[t]he Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. ' 1651(a).

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[27] A military C130 was used for photo reconnaissance of downtown Oklahoma City after the bombing. See FOX Broadcast "Ground Zero" February 27, 1996 (video footage of C130 flying over Murrah Building and interview with Capt. Steve Pulley(?) assigned to the 137th Airlift Wing of the Oklahoma Air National Guard stating that the C130 was used for "evidentiary and historical photos."). Capt. Pulley(?) stated that an FBI agent was on board the C130 as it flew its reconnaissance mission over the Murrah building. The purpose of the FBI agent was "to keep evidentiary control." Id. In addition, a variety of locations relevant to the bombing were identified for reconnaissance satellite photo image recovery. See attached Exhibit "D."

PART SEVENTEEN OF EIGHTEEN:

C. The District Court Abused its Discretion by Denying Mr. McVeigh's Repeated Requests for Brady Material.

The information Mr. McVeigh seeks to aid in his defense falls clearly within the principles set out in Brady v. Maryland, 373 U.S. 83 (1963). Under Brady, prosecutors have a constitutional obligation to disclose exculpatory evidence. "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosection." Id. at 87. The Supreme Court has recently retooled the "materiality" component of the Brady doctrine. See Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555 (1995). The Court emphasized that a showing of materiality does not mean that disclosure of suppressed evidence would have resulted in a defendant's acquittal. Kyles, 115 S. Ct. at 1565-66. Rather, the touchstone of Brady is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Id.: at 1566. In assessing Brady claims, suppressed evidence must be considered collectively, and not on an item-by-item basis. Id. at 1567.

Although a court's evaluation of a Brady claim in many cases takes place postconviction, the Supreme Court's articulation of the materiality standards in Kyles have a direct bearing on the government's obligations in this case. The information the government is constitutionally compelled to divulge to Mr. McVeigh includes the information in this motion, if this court deems it material, regardless of whether an acquittal could be had if the information is divulged, and if the cumulative effect of the evidence is such as to undermine the outcome of a jury verdict. At bottom, the prudent prosecutor should resolve all doubtful questions in favor of disclosure, and this court should grant liberal discovery, in order "to preserve the criminal trial, as distinct from the prosecutors' private deliberations, as the chosen forum for ascertaining the truth about criminal accusations." Kyles, 115 S. Ct. at 1568.

Courts have recognized that application of the Brady doctrine prior to trial is problematic. Because many cases involving Brady issues are decided post-conviction, such cases "provide only limited guidance before trial, when the potential significance of some evidence may not be fully apparent." United States v. Rahman, 870 F. Supp. 47, 51 (S.D.N.Y. 1994). Thus, the difficulty in calibrating the quantum of effect requested information would have on the outcome of a trial is exceedingly difficult in a case such as this one where no conviction has occurred. Because of the pre-trial posture of this case and the fact that the government has sought the death penalty, a liberal application of this court's authority to extract discovery from the government is appropriate.

The Tenth Circuit has acknowledged that for the purposes of Brady discovery requests, the term "prosecution" includes not only the staff of the prosecutor's office, but extends to law enforcement personnel and other agencies involved in the criminal investigation. Smith v. Secretary of New Mexico Department of Corrections, 50 F.3d 801, 824 (10th Cir. 1995); see also United States v. Perdomo, 929 F. 2d 967, 978 (3rd Cir. 1991) (term "prosecution" also includes investigatory activities). The prosecutor is "deemed to have knowledge of the access to anything in the custody or control of any federal agency participating in the same investigation." United States v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). The information and evidence obtained by all segments of the United States government, including intelligence information obtained from foreign governments or sources, are therefore subject to the requirements of Brady and Rule 16.

Thus, the prosecution cannot avoid disclosure by the simple expedient of leaving relevant evidence in the hands of another agency while utilizing it in preparing its case for trial. United

States v. Trevino, 556 F.2d 1265, 1272 (5th Cir. 1977). When the government's investigation has extended to the office of another government agency, the search for exculpatory information must be at least as thorough as was the search for inculpatory evidence:

D. Standard for Guidance in Search.

Absent some showing in precedent or principle for applying a different standard in relation to some aspect of the search the government is obligated to make, I conclude that the following two guidelines should be applied:

- First, the government must search at least as widely and diligently for exculpatory evidence as it has searched at any time, in relation to charges in the case on trial or any possibly related offenses, for evidence that might be used by the government. If, for example, the government attorneys and persons in any agency aiding in the investigation at any stage have extended their search for possibly inculpatory evidence to any office of another government agency, the search for exculpatory evidence must extend to that office and must be at least at thorough as was the search for inculpatory evidence.
- Second, the government must also extend its search to other offices as to which, on the basis of information accessible to the government attorneys by a search in the offices to which the first guideline applies, it appears there is a reasonable likelihood that a search of reasonable scope by feasible methods would identify evidence within the legal definition of the subject matter scope of the duty of disclosure.

United States v. LaRouche, 695 F. Supp. 1265, 1281 (D. Mass. 1988).

Nor can the prosecution circumvent Brady by keeping itself in ignorance or by compartmentalizing information about different aspects of the case. United States ex rel. Smith v. Fairman, 769 F.2d 386, 391-93 (7th Cir. 1985) (we believe that the purposes of Brady would not be served by allowing material exculpatory evidence to be withheld simply because the police, rather than the prosecutors, are responsible for non-disclosure). The prosecution's good faith or bad faith in efforts to produce discoverable material is, in fact, irrelevant. United States v. Agurs, 427 U.S. 97, 110 (1976); Smith, 769 F. 2d at 391-93. A perfunctory denial by a low-level official without full access or clearance to the information requested will not suffice to relieve the government's obligations to produce all discoverable material, regardless of the information's source, classification or sensitivity.

Simply stated, the due process clause places an affirmative duty on the prosecution to disclose evidence favorable to Mr. McVeigh. Kyles, 115 S. Ct. at 1565. This constitutional requirement means that the individual prosecutors in this case have a duty to learn of any favorable evidence known to anyone acting on the government's behalf in this case, including law enforcement. Id. at 1567. There is no principled reason why the individual prosecutors in this case should be absolved of their duty under the Constitution to learn of any favorable evidence on Mr. McVeigh's behalf which happens to be in the possession of other agencies in the Executive Branch, including intelligence agencies. Mr. McVeigh clearly has no independent access to such information and it would be fundamentally unfair to saddle him with the burden of producing such evidence. See Smith v. Secretary of Department of Corrections, 50 F.3d at 823 (the Brady rule is grounded in notions of fundamental fairness that embody practical recognition of the imbalances inherent in our adversarial system of criminal justice).

E. Because the Material Sought by Mr. McVeigh is Material Both to Guilt and Punishment, the District Court's Abuse of Discretion Jeopardizes Both Stages of Mr. McVeigh's Capital Trial

By its own terms, Brady applies to evidence which is material either to guilt or to punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963); see also Chaney v. Brown, 730 F.2d 1334, 1345 (10th Cir. 1984) (citing cases). The government has essentially conceded that the Brady doctrine requires evidence which "may support a lesser culpability claim in the sentencing phase of this case if a jury finds [Mr. McVeigh] guilty." D.E. 881 at 29 (Brief of the United States in Response to Mr. McVeigh's Discovery Report and Motions). The government does not dispute that such information is relevant under Brady to a capital sentencing proceeding; rather, the government merely characterizes Defendant McVeigh's request for such information as "procedurally premature." Id. The government is in fact precluded from making the argument that the discovery requests are not material to a sentencing determination in a capital case not only by Brady itself, but by this Circuit's decision in Chaney v. Brown, 730 F. 2d 1334 (10th Cir.) cert. denied, 469 U. S. 1090 (1984).

In Chaney, the Tenth Circuit granted a petition for a writ of habeas corpus, holding that the prosecution had violated Brady by withholding evidence which might have affected the sentence in a capital case. The evidence suppressed by the prosecution consisted basically of FBI 302's which detailed witness statements, some of which raised questions concerning the location of the defendant at the time of the crime and whether he acted alone, and others were simply inconsistent with the prosecution's theory of the case and the timing of events.

In granting the writ, the Tenth Circuit observed that the Eighth and Fourteenth amendments require that the sentence in a capital case not be precluded from considering as a mitigating factor, any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Id. at 1351 (citing Eddings v. Oklahoma, 455 U. S.104, 110-12 (1982)). The Tenth Circuit held that the evidence in Chaney was mitigating because it related to the circumstances of the offense as a whole, and also tended to support inferences that others were involved in committing the crime, and that defendant Chaney may have been less culpable than others. Id.

Perhaps more important, the Court noted that the withheld evidence in Chaney was significant with respect to the aggravating circumstances that had to be proven in order to sentence him to death. In Chaney, the aggravating circumstances as found by the jury to support the death sentence rested on the conclusion that Chaney was the sole perpetrator of the crimes. Id. The Court stated:

> Because the withheld evidence tends to support inferences that Chaney may not have been the sole participant in the criminal episode, and may not have personally killed the victims, or had been present at the time of the murders, the evidence might have caused the jury not to find these aggravating circumstances beyond a reasonable doubt. Id. at 1352.

Thus, Brady and Chaney make clear that the government is constitutionally obligated to provide to Mr. McVeigh any information concerning "other participants" and all reports concerning John Doe No. 2, as well as information concerning "the circumstances of the offense" which Mr. McVeigh could possibly proffer as a basis for a sentence less than death. To the extent that any of the preceding 17 specific requests in this motion address any of this information, the government is simply compelled to produce it.

However, the government's response to Mr. McVeigh's prior motion for discovery evidences a very disturbing picture of the government's understanding of its obligations under Brady. In fact, the government's position is inconsistent and contradictory even within its own brief in response to Mr. McVeigh's discovery motion. On one hand, the government proudly proclaims that it is "voluntarily exceeding its discovery obligations" as well as "exceeding Brady's requirements" by voluntarily agreeing to make all witness statements to law enforcement officers available to the defense.[28] See D.E. 881 at 5, 19-20 (Brief of the United States in

Response to Defendant McVeigh's Discovery Report and Motions). In addition, the government has undertaken a "Brady review" and has ostensibly aided the defense by categorizing Brady material into six (6) categories, including categories of other possible perpetrators as well as information relating to possible mitigation of culpability. Id. at 19-20.

Yet, barely five pages away in their brief, the government assails many of Mr. McVeigh's discovery requests as "meritless," including information of others with motives to bomb federal buildings, as well as information on John Doe No. 2. Id. at 25-30. In spite of the Tenth Circuit's decision in Chaney, the government nevertheless insists that evidence relating to John Doe No. 2 is not exculpatory. Id. at 28. The government cannot have it both ways. It cannot on the one hand be commended for exceeding its obligations under the Constitution and the Brady decision by divulging information to which the defense is (according to the government) not constitutionally entitled; but on the other hand, argue that evidence concerning John Doe No. 2 as well as other information on other possible perpetrators of the bombing are not exculpatory as a matter of law.

If the government views its production of Brady material regarding "other subjects" such as John Doe #2 as gratuitous, then the government may withhold crucial evidence at the same time it maintains that legally it is not required to give it at all. The government appears to have a deep and fundamental misunderstanding of its constitutional duties under Brady. The government's tactic throughout this case has been a willingness to divulge volumes of irrelevant information that it would not otherwise be constitutionally required to divulge, while at the same time refusing to divulge relevant and material information specifically requested by Mr. McVeigh, and then arguing incredibly that the requested information does not fall within the ambit of the Brady decision.

The government's position on these matters is inexplicable. The government does not contend that this information does not exist, it has taken the position that even if this evidence does exist, Mr. McVeigh is not entitled to it as a matter of law. The government's interpretation of Brady and its progeny is fundamentally flawed and especially troubling in a case such as this one where the government is seeking the death penalty while at the same time maintaining that it has no duty to divulge information it may have concerning other possible perpetrators of the crime. It invites the real risk of a reversal of a conviction, should there be one.

Typical of the government's stunted interpretation of Brady is its citation to this Court's opinion in Hopkinson v. Shillinger, 781 F. Supp. 737 (D. Wyo. 1991) (Matsch, J., by designation). The government cites Hopkinson for the proposition that evidence of the involvement of other perpetrators in a murder is not Brady material because such evidence does not show that the defendant was not involved in the murder. D.E. 881 at 29 (Brief of the United States in Response to Defendant McVeigh's Discovery Report and Motions). The government uses Hopkinson in order to argue that evidence of the involvement of John Doe No. 2 is not exculpatory, and therefore not properly discoverable under Brady. Hopkinson stands for no such thing and could not be more inapposite.

The procedural posture of Hopkinson was that of a successive petition for a writ of habeas corpus on a 12-year old conviction and death sentence of a state prisoner. Thus, the inquiry before the Court was whether the suppressed evidence would have created a reasonable probability sufficient to undermine confidence in the outcome of the trial and death sentence that had already occurred. In contrast, Defendant McVeigh is constitutionally presumed innocent of the crimes for which he is charged in the Indictment and seeks an Order from this Court to compel the government to produce information to which he is constitutionally entitled prior to any conviction and sentence. Because the potential significance of some evidence may not be fully apparent at the pre-trial stage, cases such as Hopkinson provide this court with "limited guidance." See United States v. Rahman, 870 F. Supp. 47, 51 (S.D.N.Y. 1994).

As the government has emphasized, it must be remembered that Brady stems from the "fundamental fairness" requirement of the due process clause and its purpose is to ensure that a miscarriage of justice does not occur. D.E. 881 at 29-30 (Brief of the United States in Response to Defendant McVeigh's Discovery Report and Motions) (citing Arizona v. Youngblood, 488 U.S. 51, 58 (1988); United States v. Bagley, 473 U. S. 667, 675 (1985)). Thus, Mr. McVeigh does not come before this Court as a convicted felon seeking absolution, but rather as a criminal defendant presumed innocent seeking information relevant and material to his defense in a capital case which is in the sole custody and control of his adversary. Mr. McVeigh asks this Court for nothing more than to Order the district court to perform its duty under the Constitution.

Moreover, when this Court decided Hopkinson, it did not have the benefit of the Supreme Court's decision in Kyles v. Whitley, 115 S. Ct. 1555 (1995). In Kyles, the Supreme Court emphasized that the "materiality" requirement under Bagley was not a sufficiency of the evidence test. Kyles, 115 S. Ct. at 1566. The Court made clear that it makes no difference under Brady whether there would still have been adequate evidence for a conviction even if the favorable evidence had been disclosed. Id.

The difference between the inquiry in Hopkinson and the inquiry in this case is the difference between deciding whether, if an oar would have been thrown to a person in a boat going over a waterfall would have saved him, or whether an oar should be thrown to a person in a boat about to go over a waterfall. It was too late to throw the oar to Hopkinson, but it is not too late to throw one to Mr. McVeigh. The Constitution requires it. Fundamental fairness demands it.

[CONCLUDED IN PART EIGHTEEN]

FOOTNOTES:

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[28] The government did not turn over to defense counsel all Grand Jury transcripts until ordered to do so by the court below in January, 1997. The government has never provided to defense counsel memos of interviews by attorneys for the government.

Not Found

The requested URL /pastorlindstedt/lindstedt/mcvey-18.htm was not found on this server.

Additionally, a 404 Not Found error was encountered while trying to use an ErrorDocument to handle the request.

Apache Server at pastorlindstedt.org Port 80

On Celebrating the Fourth of July

An Essay by Vin Suprynowicz

Most Americans should be ashamed to celebrate the Fourth

What an inconvenient holiday the Fourth of July has become.

Oh, so long as we stick to grilling hot dogs and hamburgs, hauling the kids to the lake or the mountains, and winding up the day watching the fireworks as the Boston Pops plays the 1812 -- written by a subject of the czar to celebrate the defeat of our vital ally the French -- we can usually manage to convince ourselves we still honor the same values that made July 4, 1776, a date which rings in history.

Great Britain taxed the colonists at far lower rates than Americans tolerate today -- and never dreamed of granting government agents the power to search our private bank records to locate "unreported income." Nor did the king's ministers ever attempt to stack our juries by disqualifying any juror who refused to swear in advance to "leave your conscience outside and enforce the law as the judge explains it to you."

The king's ministers insisted the colonists were represented by Members of Parliament who had never set foot on these shores. Today, of course, our interests are "represented" by one of two millionaire lawyers -- both members of the incumbent Republicrat Party -- among whom we were privileged to "choose" last election day, men who for the most part have lived in mansions and sent their kids to private schools in the wealthy suburbs of the imperial capital, for decades.

Yet the colonists did rebel. It's hard to imagine, today, the faith and courage of a few hundred frozen musketmen, setting off across the darkened Delaware, gambling their lives and farms on the chance they could engage and defeat the greatest land army in the history of the known world, armed with only two palpable assets: one irreplaceable man to lead them, and some flimsy newspaper reprints of a parchment declaring: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness -- That to secure these Rights, Governments are instituted among men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive to these Ends, it is the Right of the People to alter or abolish it. ..."

Do we believe that, still?

Recently, President Clinton's then-Drug Czar, Lee Brown, told me the role of government is to protect the people from dangers, such as drugs. I corrected him, saying, "No, the role of government is to protect our liberties."

"We'll just have to disagree on that," the president's appointee said.

The War for American Independence began over unregistered, untaxed guns, when British forces attempted to seize arsenals of rifles, powder and ball from the hands of ill-organized Patriot militias in Lexington and Concord. American civilians shot and killed scores of these government agents as they marched back to Boston. Are those Minutemen still our heroes? Or do we now consider them "dangerous terrorists" and "depraved government-haters"?

In "The Federalist" No. 46, James Madison told us we need have no fear of any federal tyranny ever taking away our rights, arguing that under his proposed Constitution "the ultimate authority ... resides in the people alone," and predicting that any usurpation of powers not specifically delegated would lead to "plans of resistance" and "appeal to a trial of force."

Another prominent federalist, Noah Webster, wrote in 1787: "Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States."

Is this still true today? Or are those who arm themselves and make contingency "plans of resistance" against government usurpations instead branded "conspirators" and "terrorists," and ridiculously associated with Timothy McVeigh (who was kicked out of the only militia meeting he is ever known to have attended -- in Michigan -- and whose actions surely reflect more directly on the screening process of the outfit that gave him his training in munitions -- the United States Army.)

In Phoenix last week, an air conditioner repairman and former Military Policeman named Chuck Knight was convicted by jurors -- some tearful -- who said they "had no choice" under the judge's instructions, on a single federal "conspiracy" count of associating with others who owned automatic rifles on which they had failed to pay a $200 "transfer tax" -- after a trial in which defense attorney Ivan Abrams says he was forbidden to bring up the Second Amendment as a defense.

Were the Viper Militia readying "plans of resistance," as recommended by Mr. Madison? Would the Constitution ever have been ratified, had Mr. Madison and his fellow federalists warned the citizens that such non-violent preparations would get their weapons seized, and land them in jail for decades?

Happy Fourth of July.
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Back to Modern Militiaman #6
Back to *The Patriot Coalition*?
Back to Patrick Henry On-Line

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Resistance Computer Communications

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Anyone who wishes to be in communication with other Resistance members is going to have to figure out how to receive and transmit information intended only for the eyes of their chosen recipient. Trust and communications go together. If there is no trust, then there is no point to communication. If there are no secure means of communication, then trust cannot be built.

Even those militiamen who believe in "leaderless resistance" but who are not so underground that they are acting exclusively upon their own, need secure but reliable communications. In many cases you need to know your targets and the security of those targets. You need to know the status of your own cell and that of your enemy. It is for a reason that Communication, Command and Control are known in military circles as C3. They are so interlinked, that you cannot have one without the other two. A network of cells operating to a common purpose requires C3, but especially communication. It is only a lone cell of one individual which is free of the requirements of communication.

In this day and age of wire-tapped telephones and extensive gubbnmint surveillance, knowing how to encrypt the messages going in and out of your residence with a computer is a vital skill. While the computer and the Internet is the primary tool of the Resistance pamphleteer and agitator, still, for the ordinary rank-and-file Resistance soldier computer skills are secondary only to good rifle marksmanship. Why? By using dummy e-mail boxes and agreed-upon coded messages, communications can take place even when the Resistance soldier has no computer of his own, but can access one by using that of a friend or using a public computer found at a college or university. The Modern Militiaman uses unobtrusive communications technology whenever possible to gain his objectives.

This article shall cover the use of PGP encryption for those who have access to an IBM-type personal computer. The second topic shall be setting up dummy e-mail addresses for those people who have access to a computer, even a public computer, which has Internet access.

Using Pretty Good Privacy (PGP)

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The best, most common encryption method is the use of Pretty Good Privacy (PGP), touted by the program itself as "encryption for the masses." They are not kidding. This program can be accessed using DOS 3.3 with a 720k floppy disk on an ancient 8088 XT. However, it would be best if your computer is at least a 386sx with a VGA monitor and 4 megabytes of RAM, DOS 5.0 and Windows 3.1. It is still best to use PGP with a floppy disk, however. It is a lot cheaper to destroy a 25 cent floppy than it is to protect your PGP files by destroying your hard drive. Just keep a duplicate floppy in a safe place and do not use them cheap black floppies that you buy by the hundred. Use a name brand floppy.

PGP uses two sets of keys for encryption. One key is your "public" key, which looks like a random jumble of text. You give your public key to some person with which you wish to get in contact. For example, my public key is:

```
-----BEGIN PGP PUBLIC KEY BLOCK-----
Version: 2.6.2

mQCNAzByVNkAAAEEAMh2M+1FWeDCpSIt/An4ZZjlthsQXVJo1ZLrnwze+lHZfoT+
```

```
8lArm/GgRNRFYTXxlxIItJI7TihIL2DB4R/2HWxbvxrI6hXQdKVPSEC8/+N18dO1
oeUO4JQcApgOlWoD+sB81f4ir7o8aOA9xq/2SPclb+hmwqpcHaiKnJwfgEZ1AAUR
tB5NYXJ0aW4gTGluZHN0ZWR0IDwxMDIxNDIsMTY2Nz4=
=IyHe
-----END PGP PUBLIC KEY BLOCK-----
```

The PGP program generates a "secret" key in conjunction with the public key. You give the persons with which you wish to communicate your "public" key and the "secret" key used with the public key remains on the floppy or hard drive, accessible only if you give out your secret pass phrase.

Many people use a shell instead of the command line favored by PGP. The shell gives a menu of what steps to follow, rather than having to read the command line and follow its prompts. However, since every person will not have access to the same PGP shell program, it would be best to use the command line to show how to use PGP.

So where does one get PGP? The best way to get it is to go to the MIT WWW page and download PGP 2.6.2 directly, as this version is guaranteed to be untampered with by the computer eggheads at MIT. The WWW page to access is:

http://web.mit.edu/network/pgp.html

Answer the questions and read the legalese text then download the 2.6.2 PGP zip file. Using pkunzip 2.04, then place the unzipped files on a 1.2 meg or 1.44 meg floppy.

There are other places to get this program. From BBS's, from CD-ROMs of shareware such as The Software Vault series. If need be, send this author $5 and your address and he will send you back a floppy with PGP 2.6.2 on it, a PGP DOS shell program, and a tutorial on how to use the shell program.

So how do we use the PGP program? Let me run you through the command line of PGP using DOS or a DOS session under Windows:

1. Type **pgp**

The program will inform you that you do not have a TZ time variable in your autoexec.bat file. For a usage summary (online help) type **pgp -h**

2. Type **pgp -h**

Then you will see several screens of confusing screens with various ways to use pgp. If you cannot understand the screens, print out and read the documentation, and hopefully things will become clear.

3. First you will need your own secret/public key pair. The help screen, under key management, said to generate your own unique public secret key pair:

Type **pgp -kg**

4. The program asks you to select your RSA code size. You want secure communications, 1024 bits.

Type **3** Enter

5. The program asks you to enter your name and maybe your e-mail address. For the purpose of this lesson you are Joe Sixpack. The screen says "Enter a user ID for your public key:"

Type **Joe Sixpack**

6. The program says "You need a pass phrase to protect your RSA secret key." Then it tells you what is allowable. For this example you will use the following pass phrase:

Type **Tastes Great -- Less Filling**

Then the program will ask you to "Enter same pass phrase again." Do so, knowing that this program insists that you do it exactly right. If you don't do it right, you will see: "Error: Pass Phrases were different. Type it in again until you get it right.

7. The program then says: "We need to generate XXX random bits . . . Please enter some random text until you hear a beep."

Run your fingers over the keyboard until you hear a beep, then wait.

The computer will generate a line or two of . . . .****. . . . while it thinks and then eventually say, "Key generation completed." and kick you back to the command line prompt.

8. By this time, because our random key strokes were different, our secret keys and public keys will be different. However, we still need to know what our public key is, so we can give it to our friends with whom we shall communicate. We need to generate our public key and put it in an ASCII text file, so we can send it on to friends.

Type **pgp -kxa**

The program will ask for the user-id. Type in **Joe Sixpack**, then Enter. When the program asks what file you wish to place the public key, type **myfile.txt** or **sixpack.txt**.

9. Now that you have a public key, you will need another person's public key in order to communicate with them. You can go over to myfile.txt or sixpack.txt and send some person your public key or you can initiate the process yourself if you have their public key. Above you have one public key, namely mine. So cut and paste the text of my public key, starting with the first hyphen and ending with the last hyphen,

```
-----BEGIN PGP PUBLIC KEY BLOCK-----
Version: 2.6.2

mQCNAzByVNkAAAEEAMh2M+1FWeDCpSIt/An4ZZjlthsQXVJo1ZLrnwze+lHZfoT+
8lArm/GgRNRFYTXxlxIItJI7TihIL2DB4R/2HWxbvxrI6hXQdKVPSEC8/+N18dO1
oeUO4JQcApgOlWoD+sB81f4ir7o8aOA9xq/2SPclb+hmwqpcHaiKnJwfgEZ1AAUR
tB5NYXJ0aW4gTGluZHN0ZWR0IDwxMDIxNDIsMTY2Nz4=
=IyHe
-----END PGP PUBLIC KEY BLOCK-----
```

and save it to a file named lindsted.txt. Then you must add this public key of mine to your pgp public keyring.

Type **pgp -ka lindsted.txt**

The computer will ask if you want to certify my key after it is added to your public key ring. To make sure this key is added to your public key ring, type **pgp -kv** and check it out. Now you know how to add public keys to your floppy and have your own public key, you are ready to start sending pgp encrypted messages.

10. To send an encrypted message to somebody whose public key you have, send them a message with your public key (you do want a response, don't you?) in the clear. Write your message in a

word processor. Save the message as a text file. Then encrypt the message as follows:

Type **pgp -ea** filename.txt his_user-id

The **"a"** is for e-mail transmission as it sends a message in ASCII characters. Use the **"a"** suffix whenever you want to ensure that the input or output is in ASCII.

11. To decrypt a message sent to you, you must have the sender's public pgp key on your keyring. This has been covered in **#9** above. A new sender should send you his public key. Place the ASCII text on your floppy (hopefully in a work directory) with a new filename. If the new filename is one with the date on it and a "t" for transmission then it should be easy to remember that filename.

Type **pgp** filename.txt newfilename.txt

The command line should tell you the file is encrypted and that your secret key is needed to read it. The secret key is unlocked by using your secret pass phrase. Remember it?

The above instructions will be augmented if you read the manual, which is on every PGP 2.6.2 floppy. In fact PGP will not work unless the document text files are on the floppy. One can use a 720k floppy by deleting the instructions while keeping the text names on disk, but for most people the reading of the instruction manual is recommended. The quick instructions offered above are a small, minimum overview on how to use PGP.

Is PGP secure? Yes, so far as known. Most people will be compromised by forgetting to unplug the modem when they encrypt/decrypt their messages or by the NSA looking at your fingers, or other such tricks. Other tricks which can be used is to use your PGP to generate a new public key and a new message to be uncovered only by the recipient. This is equivalent to running a PGP "loop" within itself and should add to security. Should anyone rely on PGP to the exclusion of security elsewhere? No. Keep hold of your PGP floppy, run PGP from your hard drive or leave messages archived where government gun goons can get at it and have a step up towards brute numbers crunching and code cracking by having open and encrypted messages to compare. Too much confidence in "uncrackable" codes can be fatal, as the Germans found out with ULTRA and ENIGMA in WWII.

Lacking anything else, secure communications policy means the use of PGP. Using a made-up code in advance in addition to the PGP adds to message security. Encourage everybody to use PGP for even random messages, because the feds never know which message is important and which is routine unless you tell them. If everyone used PGP, then sooner or later the government would have to pack it up insofar as using wiretaps and interception of electronic mail. Their snooper files, indexed to search and save any messages with flag words such as "patriot," "militia," "freeman," "Constitution," "Republic of Texas," etc. will be helpless in scanning jumbles of random text. A patriot's job is always to make it hard for the cowardly prying despot.

Dummy E-Mail Boxes

The greatest use for PGP came with the advent of electronic mail (e-mail). But what if the gubbnmint is aware that a particular e-mail address is the private electronic mailbox of you -- John Q. Radical? A large amount of PGP messages announces to their small bureaucratic minds that both the sender and receiver have something to hide. What then?

Or say you are a deep-underground Resistance agent with Unabomber as your role model. You don't have electricity, much less a computer but you must remain in touch so that funds can arrive and you get your orders from your Council of Hard Men. What then?

So the first question is: what equipment do you have? If you have at least a 386sx computer with 4 megabytes of ram, a VGA monitor, and an 80 meg hard drive running DOS 5.0 and Windows 3.1 software and a 14.4 modem then you are in luck. Today such a setup should cost you $350 or less. You can't buy such a limited system new today because they no longer make such obsolete equipment, referred to as "boat anchors." A thousand dollars will get you a Pentium processor, a one gigabyte drive, Windows95, a 28.8 modem, and a 14 inch VGA monitor. Get local Internet service if you live in a town of over 1,000 people and you are well on your way. Then the world of secure communications can be piped into and out of your very own home.

Free or Inexpensive E-Mail. If you have the abovementioned computer equipment and live in a medium-sized town to large city, chances are you can get an Internet Service Provider (ISP) cheaply or even for free. You access a local telephone number so the only cost is your ISP monthly fees. Do not get on America On Line or CompuServe as their local lines are extremely busy or their service is expensive, costing you by the hour. The best deal is to go for "unlimited service" for a monthly fee of $20 per month or less. In this age every small town and local college boasts that they are on the Internet; you might as well be also.

Internet service usually means that you have electronic mail (e-mail) coming out and going in. It also means you can surf the 'Net with a browser. Usually you also have some space reserved on your ISP's server for a World Wide Web (WWW) page of your own, from one megabyte to ten megabytes. Let us look at e-mail, because that is the most commonly used form of communication and on which this article has its premise.

E-mail is the cheapest form of communication on the planet. How much would it cost for you to send a message to 100 people? Thirty-two dollars in first-class stamps, plus the cost of paper and printing. Faxes, unless a local telephone call, costs the price of a long-distance charge. But e-mail costs almost nothing as your modem sends your message across town or across the globe as fast as an electronic signal down your telephone wire, going first to your ISP and then to the recipient's ISP, waiting for him to read it. The true costs of e-mailing 1,000 people are not much more than the cost of e-mailing one person. This is the true power of the medium of e-mail. Some open militia or Resistance organizations have the e-mail addresses of thousands of Patriots. Chances are you are reading this article via e-mail yourself.

Of course such promiscuous e-mailing is contrary to the good usages of communications security. Some listserving e-mailers openly let everyone they e-mail know everyone else's e-mail address. It gets so bad that once I was sent a message about how the Feds knew every patriot's e-mail address. Three-quarters of that message concerned to whom the sender was sending that message and their e-mail addresses. Two of the list of over 200 e-mail addresses were mine. I sent him back a message with the following subject: Why Should the Feds Keep Track of Our E-mail Addresses When They Have You Telling Everybody What Those Addresses Are?

Most e-mail programs, such as Eudora and Pegasus, or ISP providers furnish a command called **black carbon copy** or **bcc:** in addition to the **to:** or **cc:** command. Using the **bcc:** option to address the vast majority of your postings means that the rest of the people who get the message do not know who else received that message. It maintains a "need to know" basis for your communications. It also cuts down on the length of your message, since not everyone needs or wants to read to whom else you sent that message.

Of course all messages must have one recipient to whom the message is sent. I get around that by sending a message to myself at a different e-mail address. This method preserves operational security because all the other people I sent it to using **bcc:** only know that I and they received that message. This also gives me a record as to when and what message was sent and it confirms transmission of the message as well. To do this, one needs a secondary e-mail system.

JUNO at (http://www.juno.com) is one such system. It used to be a much better system because it offered totally free e-mail, even for those in rural areas without a local ISP. Juno used to offer free 1-800 number calling, to where you would call to their local system using a provided 1-800 number. But since March of this year this free calling has ceased, in favor of using local numbers provided in towns of greater than 100,000 people. If you live in one of the 400-some cities where access is a local call away, then Juno is still a free service. All you have to do is look or not look at the advertising which is displayed while you are downloading and uploading e-mail. Juno has a spell-checker, address book, and, because of its parentage as 1-800-number free e-mail, one of the fastest upload and downloading times. It also has two disadvantages: no **bcc:** addressing and no file attachment option.

With computers running Win95 as an operating system, you can have more than one JUNO e-mail address running -- one on each hard drive partition if you wish. Make up a number of aliases and conditions, then download and upload e-mail at will.

For someone with a modem-equipped laptop computer, setting up a new Juno account and plugging into a motel room telephone is the acme of portable and secure e-mail communications. Juno accommodates PGP. Coupled with dummy e-mail addresses set up in advance or opened and then abandoned, any halfway competent Resistance communications or intelligence operator could operate a political, propaganda, intelligence or espionage network, seeming to be either a hundred man team or operate quietly as a mole. A Juno account can be easily switched to take advantage of a big-city local telephone number. This author offered to set up a communications link for the first meeting of the 3d Continental Congress in October, 1996 and have half-hourly uplinks to every patriot organization and militia general across the fruited plain. I arranged to borrow a modem-equipped laptop and could well have had such a linkage in operation (in effect e-mail conferenceing) but the so-called organizers refused to allow such an operation as they had their own private agenda.

The get-your-free-WWW-page servers such as Geocities, Tripod, and Angelfire also come with a free e-mail address. These services offer free server space to store a small WWW page in return for you putting up your own content, then recoup this freebie by placing Internet Advertising every which place they can. (This article is on Geocities right now -- check the bottom of this page.) These free e-mail addresses are really WWW based, and thus not as secure because you must fill out a form easily traced back when you upload your WWW pages. These e-mail services are not as fast as a dedicated e-mail system, and not as discreet as a full WWW page server because you still can be traced down the telephone line to a given computer -- your computer. This hybrid e-mail system is a compromise, because you need to use a computer which can be traced, so it doesn't have the anonymity of full WWW based e-mail systems.

Don't have a computer? Don't worry. If you can get access to an Internet-capable computer, such as is now commonly found in public libraries, colleges or even in Internet coffeehouses (they even have such things in Joplin, Missouri) then you can set up one or one hundred dummy WWW e-mail accounts.

The two major WWW pages are **www.hotmail.com** and **www.rocketmail.com**. They are so alike that I sometimes think they are owned by the very same company. At your computer at home or using the one at the local public facility you go to Hotmail.com or Rocketmail.com and set up an account. You can give your real name and address or you can make one up although you are told you are not supposed to in the rules. If an e-mail address can be set up and accessed by anyone on any Internet-capable computer, how is that rule going to be enforced? It can't. A person is only limited in the number of e-mail accounts he can set up by how many addresses and passwords he can memorize. A pencil and a scrap of paper can overcome that limitation.

Having set up one of many e-mail accounts accessible by someone else's computer or your own, what are you going to use a particular e-mail account for? Easy! Infiltration, possibly subversion.

There are all manner of silly people operating listservers who just got to advertise their own importance or morality. A WWW-based e-mail account can disguise your identity and location. Then you can listen while all manner of self-righteous people like 'Libertarians,' leftists, policemen, or bureaucrats run their mouths while you quietly amass information on them. In your anonymity, you can occasionally take advantage of these fools by giving them a blast or a flame before you are booted off the e-mail network. But it's best function is in lurking -- staying quiet and listening.

If you have access to a floppy disk on the computer used, you can upload and download PGP files. But uploading and downloading messages and file storage are not these e-mail address' strong suit. Being dependent upon the WWW, these e-mail addresses are not nearly as fast as hard-drive-based dedicated e-mail service.

These anonymous e-mail services are technology's gift to the Resistance communications and intelligence operatives. An e-mail address can be activated, used one time or many, abandoned, or reclaimed in total anonymity. There is no defense or trap which can be set using these electronic drop boxes.

The more cunning of the government tyrants already know the Internet and encryption technology make spying on their rebellious citizens impossible. Instead they will still try to set up new bureaucracies such as the **President's Commission on Critical Infrastructure Protection** to try enhancing their control over the People's property. They will set up new "laws" to prohibit encryption of the People's private electronic papers heedless of Fourth Amendment guarantee and the fact that their own scientists say that the advance of encryption makes such prohibitions impossible as well as immoral. Regardless of such statist foolishness, our interests mandate that we in the Resistance use our encryption and anonymous e-mail capabilities to full effect in our struggle for freedom against tyranny and despotism.

--**Martin Lindstedt**
Managing Editor, modern Militiaman

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Declaration of the Causes and Necessity of Taking Up Arms

July 6, 1775

A declaration by the representatives of the united colonies of
North America, now met in Congress at Philadelphia,
setting forth the causes and necessity of their taking up arms.

If it was possible for men, who exercise their reason to believe,
that the divine Author of our existence intended a part
of the human race to hold an absolute property in, and an unbounded power
over others, marked out by his infinite goodness
and wisdom, as the objects of a legal domination never rightfully
resistible, however severe and oppressive, the inhabitants of
these colonies might at least require from the parliament of Great-Britain
some evidence, that this dreadful authority over them,
has been granted to that body. But a reverance for our Creator, principles
of humanity, and the dictates of common sense,
must convince all those who reflect upon the subject, that government was
instituted to promote the welfare of mankind, and
ought to be administered for the attainment of that end. The legislature of
Great-Britain, however, stimulated by an inordinate
passion for a power not only unjustifiable, but which they know to be
peculiarly reprobated by the very constitution of that
kingdom, and desparate of success in any mode of contest, where regard
should be had to truth, law, or right, have at length,
deserting those, attempted to effect their cruel and impolitic purpose of
enslaving these colonies by violence, and have thereby
rendered it necessary for us to close with their last appeal from reason to
arms. Yet, however blinded that assembly may be,
by their intemperate rage for unlimited domination, so to sight justice and
the opinion of mankind, we esteem ourselves bound
by obligations of respect to the rest of the world, to make known the
justice of our cause. Our forefathers, inhabitants of the

island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and unhospitable wilds of America, then filled with numerous and warlike barbarians. -- Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies. --Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. -- From that fatal movement, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations. -- The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and then subduing her faithful friends.

These colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder. -- The uninterrupted tenor of their peaceable and respectful behaviour from the beginning

of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations. -- Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried. But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is

chosen by us; or is subject to our control or
influence; but, on the contrary, they are all of them exempt from the
operation of such laws, and an American revenue, if not
diverted from the ostensible purposes for which it is raised, would actually
lighten their own burdens in proportion, as they
increase ours. We saw the misery to which such despotism would reduce us. We
for ten years incessantly and ineffectually
besieged the throne as supplicants; we reasoned, we remonstrated with
parliament, in the most mild and decent language.
Administration sensible that we should regard these oppressive
measures as freemen ought to do, sent over fleets and
armies to enforce them. The indignation of the Americans was roused, it is
true; but it was the indignation of a virtuous, loyal,
and affectionate people. A Congress of delegates from the United Colonies
was assembled at Philadelphia, on the fifth day of
last September. We resolved again to offer an humble and dutiful petition to
the King, and also addressed our fellow-subjects
of Great-Britain. We have pursued every temperate, every respectful measure;
we have even proceeded to break off our
commercial intercourse with our fellow-subjects, as the last peaceable
admonition, that our attachment to no nation upon earth
should supplant our attachment to liberty. -- This, we flattered ourselves,
was the ultimate step of the controversy: but
subsequent events have shewn, how vain was this hope of finding moderation
in our enemies.
Several threatening expressions against the colonies were inserted
in his majesty's speech; our petition, tho' we were
told it was a decent one, and that his majesty had been pleased to receive
it graciously, and to promise laying it before his
parliament, was huddled into both houses among a bundle of American papers,
and there neglected. The lords and commons

in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts- Bay; and that those concerned with it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to inforce due obediance to the laws and authority of the supreme legislature."

-- Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their coasts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and strenuously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. -- equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favor.

Parliament adopted an insidious manoeuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to

conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation. -- The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismission, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrate, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supercede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial." -- His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have rceived certain intelligence, that general Carleton, the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword and famine. [1] We are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. -- The latter is our choice. -- We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. -- Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our

innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. -- We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, declare, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverence, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. -- Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. -- We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of

offence. They boast of their privileges and

civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our

birthright, and which we ever enjoyed till the late violation

of it -- for the protection of our property, acquired solely by the honest

industry of our fore-fathers and ourselves, against

violence actually offered, we have taken up arms. We shall lay them down

when hostilities shall cease on the part of the

aggressors, and all danger of their being renewed shall be removed, and not

before.

With an humble confidence in the mercies of the supreme and

impartial Judge and Ruler of the Universe, we most

devoutly implore his divine goodness to protect us happily through this

great conflict, to dispose our adversaries to

reconciliation on reasonable terms, and thereby to relieve the empire from

the calamities of civil war.

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